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Original

26 Feb. 2005  
express delivery

Hon. Vernon Williams  
Secretary  
Surface Transportation Board  
1925 K Street, N.W.  
Washington, D.C. 20423-0001

Re: AB 6 (Sub-no. 334X) <sup>5</sup> > 213422  
AB 6 (Sub-no. 346X) > 213418  
Reply in Opposition to out-of-time  
petition to reopen filed by Zoller, et al.

Dear Mr. Williams:

Enclosed please find an original and 10 copies of a Reply in Opposition to the petition to reopen filed by Zoller et al. in the above-referenced proceedings. The Reply is made on behalf of the Washington State Parks and Recreation Commission, Rails to Trails Conservancy, and Klickitat Trail Conservancy. In some cases fax copies of signature pages are enclosed herewith. Originals will be supplied when all are assembled.

By my signature below, I certify service on the date above by express delivery upon the following counsel for parties:

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Very truly,

  
Charles H. Montange

ENTERED  
Office of Proceedings  
FEB 27 2005  
Part of  
Public Record

Encl.

cc. Barbara Herman, Jim Minick, Andrea Ferster (w/encls)

BEFORE THE SURFACE TRANSPORTATION BOARD

Burlington Northern Railroad )  
Company -- Abandonment Exemption -- ) AB 6 (Sub-no. 346X)  
in Klickitat County, WA )

Burlington Northern Railroad )  
 Company -- Abandonment Exemption -- ) AB 6 (Sub-no. 335X)  
 in Klickitat County, WA )

Reply in Opposition  
on behalf of  
Washington State Parks and Recreation Commission,  
Rails to Trails Conservancy, and  
Klickitat Trail Conservancy

Washington State Parks and Recreation Commission, Rails to Trails Conservancy, and Klickitat Trail Conservancy (hereinafter referred to collectively as "Trail Owners") hereby oppose the Petition to Re-open filed on behalf of petitioners Tracy and Lorraine Zoller, William Giersch, David and Krister Matson, and Allen Tooke (hereinafter referred to as "the Zollers" or "petitioners"). Petitioners have been filing unsuccessful proceedings or otherwise raising spurious claims concerning the railbanked railroad corridor involved here for years.<sup>1</sup> This is but the latest regrettable chapter of their ill-conceived campaign against the continued existence of a magnificent trail (the "Klickitat Trail") on a lawfully "railbanked" former railroad corridor. That rail corridor (the "Goldendale Branch"), extends from Lyle (on the Columbia River) up the Klickitat and Swale Creek Canyons to the Goldendale Plateau, in Klickitat County, Washington.

<sup>1</sup> See, e.g., Dave v. RTC, 863 F.Supp. 1285 (E.D. Wash. 1994), aff'd, 79 F.3d 940 (9th Cir. 1996).

### I. Overview of Railbanked Rail Corridor

In the two proceedings involved in this case, Burlington Northern Railroad ("BN"), a predecessor of Burlington Northern and Santa Fe Railway ("BNSF"), received abandonment authority for the entire "Goldendale Branch" extending from the switch with the BN mainline on the north bank of the Columbia River all the way to end of line in Goldendale, the county seat of Klickitat County. The portion of the Goldendale Branch from approximately MP 0.38 in Lyle (roughly state highway 14) to approximately MP 30.8 (roughly Uecker Road on the Goldendale Plateau) was "railbanked" pursuant to 16 U.S.C. § 1247(d) and orders of this Board's predecessor (the Interstate Commerce Commission or "ICC"). Rails to Trails Conservancy ("RTC") purchased this railbanked corridor from BN as part of a larger package of railbanked lines. RTC subsequently donated the railbanked line to the Washington Parks and Recreation Commission. BNSF retained the portion of the Goldendale Branch south of highway 14 in Lyle because it was contiguous and proximate to the BNSF mainline, which it largely paralleled, and because extending an "interim trail" across highway 14 might pose traffic hazards. The segment retained by BNSF also paralleled (for approximately 0.19 mile) a county road (no. 20020). This road was vacated some time in late 2003.

Lyle is located on the Columbia Gorge. The Trail proceeds adjacent to the Klickitat River in the Klickitat River Canyon from Lyle to a point above the town of Klickitat, where it

enters the remote Swale Creek Canyon. The Klickitat River is an officially designated Wild and Scenic River from Lyle to the "Pitt" area, near the town of Klickitat. For practical purposes, the trail preserves the only corridor appropriate for possible future reactivation of rail service between the Gorge and the Goldendale Plateau. It is also an "ideal facility for natural history instruction and exploration." V.S. of B. Robinson, para. 3, Ex. C.

## II. Interest of Trail Owners

Washington State Parks and Recreation Commission ("Commission") is the agency of the State of Washington in charge of the state park system. Commission owns the entire former railroad corridor involved in this proceeding from approximately MP 0.38 in Lyle to approximately MP 30.8 at Warwick on the Goldendale plateau. Commission's ownership derives, inter alia, from a deed from Rails to Trails Conservancy and from relevant Notices of Interim Trail Use ("NITU's") issued by this Board's predecessor in the above referenced proceedings. The Commission has installed signing, public safety features and fencing at adjacent landowner request, as well as fish habitat improvements, on the trail, and has a cooperative agreement with Klickitat Trail Conservancy ("KTC") for KTC to provide additional maintenance services. Dec. of Jim Harris (State Parks) para 1 (Ex.A). "The Commission believes that the Trail is an asset to the State of Washington and in effect has rejected efforts by trail opponents to stop

use of the trail." Id. para 5. The Commission "has publicly supported and encouraged National Recreational Trail designation for the Klickitat Trail." Id. para 4.

RTC owns a right to re-acquire from Commission all or any portion of the property at issue in this proceeding should Commission determine not to employ same for interim trail use/railbanking purposes. RTC is an IRC 501(c)(3) non-profit organization with approximately 100,000 members nation-wide (including over 3100 in Washington State) devoted to fostering the preservation of otherwise-to-be abandoned rail corridors for trails and other compatible public purposes, including conservation and future rail reactivation ("railbanking").

KTC is an IRC 501(c)(3) non-profit corporation with approximately 160 members and many additional supporters located almost entirely in Klickitat County with a scattering in adjacent counties in Oregon and Washington. KTC sponsors hikes, nature walks, conservation projects, bicycle rides, and maintenance activities on the property involved in this proceeding, i.e., the Klickitat Trail. From March 1, 2003 to November 1, 2004, KTC members and volunteers have worked 1384 hours on all parts of the 31 mile trail, as documented in reports furnished the Commission. KTC work parties have controlled noxious weeds, and removed trash scattered by adjacent landowners and highway users on the Trail. In addition, KTC has adopted a portion of adjacent state highway 142 for litter clean-up. KTC also rents portapotties for four

trailheads for part or all of each year, along the trail. See V.S. of Pamela Essley (Exhibit B); V.S. of Barbara Robinson (Exhibit C). In addition, KTC owns an open space and rail reactivation easement relevant to this proceeding. Essley V.S. (Exhibit B); Robinson V.S. (Exhibit C); Letter, R. Nelson to C. Montange, para "fourth", dated Feb. 23, 2005 (Exhibit D).

III. A Word on Some of the Relief Sought by the Zollers

To the extent that the Zoller petition seeks a reopening for STB to issue declaratory judgments that certain portions of the Goldendale Branch have been "abandoned," it is seeking relief that the Board does not give.

Petitioners seem to be confused about the concept of "abandonment." STB authorizes abandonment of federal freight rail common carrier obligations. An STB authorization if lawfully consummated by a railroad allows the railroad to stop providing common carrier services on a line. That does not mean the line is abandoned for rail purposes. Whether a line is abandoned for rail purposes generally only matters if one is dealing with a dispute over the construction of deeds in connection with possible base fee reversions or rail easement extinguishments that may arise in the event STB authorizes abandonment, the authorization is consummated, and a railroad in fact vacates a line for all rail purposes.<sup>2</sup> The issue is

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<sup>2</sup> Railroads may retain lines authorized for abandonment by STB, and on which the authorization has been consummated, for side or storage track, or as industrial leads, or for some future use, or for sale for other rail purposes, including excursion rail or light rail. Whether the line is in fact

generally considered in state court quiet title type proceedings, or sometimes in federal court declaratory actions where the question of actual abandonment is germane to who gets a federally granted railroad right of way under 43 U.S.C. § 912 as modified by 16 U.S.C. § 1248(c).

STB does not make declaratory determinations of past (de facto or de jure) abandonment (whatever the Zoller petition means by that); STB instead authorizes (licenses) abandonment prospectively. Phillips v. Denver and Rio Grande Western R., 97 F.3d 1375 (10th Cir. 1996).

Congress has adopted a number of "remedies" to preserve otherwise-to-be-abandoned rail corridors in the event the Board authorizes an abandonment. These remedies include "offers of financial assistance" ("OFA's") under 49 U.S.C. § 10904, "public use conditions" under 49 U.S.C. § 10905, and "interim trail use" or "railbanking" under 16 U.S.C. § 1247(d). Focussing on the latter, an "interim trail manager" properly applies, the railroad consents, and the parties then reach an agreement, STB retains railbanking jurisdiction over a line otherwise authorized for abandonment. As to railbanked lines, the railroad can remove track and ties, cease operations entirely, and donate or sell the line to the "trail manager." The line may be used as a trail until possible future rail reactivation. 16 U.S.C. § 1247(d) specifically provides that during the railbanking period, the line may not be treated as abandoned for

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abandoned at state law depends on the application of state law.

purposes of state or local law.

The closest STB gets to determining that a line has been abandoned is to determine that it no longer has jurisdiction over a line for regulatory purposes. E.g., RLTD Railway Corp. v. STB, 166 F.3d 808 (6th Cir. 1999).

Besides being relief that STB does not afford, the relief sought by petitioners Zoller, et al., in reference to declarations of abandonment is a house of cards whose predicate makes no sense. The Zollers seek a determination that a short connection to the BNSF Columbia River mainline has been de jure abandoned in Lyle, and that on this basis the entire railbanked corridor up to the Goldendale Plateau has been de facto abandoned. But even under the assumption of the Zoller petition that all federally railbanked former rail lines must be interconnected forever to the interstate rail network, the relevant question is not whether a segment in Lyle has been "abandoned." Instead, the relevant issue is whether either BNSF or a third party continues to control a corridor sufficient for interconnection purposes. As demonstrated herein, BNSF and/or Trail Owners do. This renders the relief sought by petitioners moot.

In the end, the only relief sought by the Zoller Petition that is both (1) within the authority and practice of the Board, and (2) potentially relevant is the Zoller Petition's request for reopening to determine whether the Board continues to have railbanking jurisdiction over the railbanked portion of the



Goldendale Branch. This is the only question arguably presented in the petition; it turns out to be easy to resolve, and to it we now turn.

#### IV. ARGUMENT

##### A. Burden of Proof in De-Railbanking Petitions

In order to reopen these proceedings, petitioners must establish material error, new evidence, or substantially changed circumstances justifying reopening. 49 C.F.R. § 1115.4.

Under this Board's applicable precedent, the burden of proof on a petition like this to reopen a proceeding effectively to revoke an interim trail use/railbanking authorization is on the proponents of the petition. Central Kansas Railway--Abandonment Exemption -- in Marion and McPherson Counties, KS, AB 406 (Sub-no. 6X), decision served May 8, 2001, [hereinafter cited as "CKR May 8, 2001 decision"] text at note 12 ("burden is on the landowners or other interested persons to show that active rail service cannot be restored [by reason of alleged land sales]"). There are two aspects to the showing required of proponents of a de-railbanking petition. The proponents have the burden of demonstrating (a) that there has been a severance and (b) that the severance renders impossible rail reactivation on the railbanked facility. Central Kansas Railway--Abandonment Exemption -- in Marion and McPherson Counties, KS, AB 406 (Sub-no. 6X), decision served Dec. 8, 1999 [hereinafter cited as "CKR Dec. 8, 1999 decision"], text at note 12 (must show that rail service "cannot be restored").

Moreover, where property title is disputed, the proponents of a de-railbanking petition must "seek a state court ruling on the underlying state property law issues." CKR May 8, 2001 decision, supra.

Finally, this Board in the CKR decisions left open the question whether a severance by reason of a sale would indicate an intent to "abandon" a railbanked portion of a line. CKR Dec. 8, 1999 decision (discussion of Jost v. STB, D.C. Cir. 99-1054, Oct. 22, \*1999, slip op. at 14, and also footnote 10). As we construe the Board's statements, this means the Board did not decide whether a properly railbanked line could lose its railbanked status in the event of a subsequent severance of the railbanked line from previously adjoining rail property. We are aware of no case, STB or judicial, in which the issue is squarely presented, much less resolved. In Union Pacific R. Co. -- Abandonment Exemption -- in McPherson, et al. Counties, KS, AB 33 (Sub-no. 158X), a decision subsequent to CKR, this Board initially refused to extend a NITU for the City of Marquette due to possible severance of the portion of rail line that the City continued to seek for railbanking purposes after UP had consummated abandonment authority on both sides of the proposed railbanked segment. This Board invited an explanation. The City responded that other rights of way (including state highways and a railbanked trail) could be employed to re-establish a connection. City also argued that the abandoning railroad (UP) could re-establish a connection by means of

eminent domain. See "Supplement" filed on behalf of City of Marquette by T. McFarland, dated April 17, 2002, attached as Exhibit E. This Board ruled that this showing was sufficient to show that the segment "remained eligible for a NITU." Union Pacific R. Co., supra, AB 33 (Sub-no. 158X), served August 28, 2003.

While this decision does not answer the question whether the Board loses railbanking jurisdiction over an otherwise railbanked segment if no other corridors connecting it to the main line exist and if eminent domain is unavailable, the decision does drastically narrow the circumstances in which a severance outside the railbanked segment could be relevant.

B. No Severance

Within the framework set forth above, it is obvious that Petitioners utterly fail to carry their burden of proof to reopen this proceeding.

First, the Zoller petition fails to establish a severance.

Second, even if the Zoller petition established a technical severance, that severance hardly imperils rail reactivation of the railbanked portion of the Goldendale Branch and it in no event represents an intent to de-railbank.

Third, railbanking is a remedy the continued availability of which once properly implemented should not turn on subsequent actions by the railroad or third parties with regard to non-railbanked parcels, even if between the railbanked line and operating lines of railroad.

For each of these reasons, any one of which is sufficient, the petitioners fail to present the kind of material error, new evidence, or changed circumstances that must be shown under 49 C.F.R. § 1115.4 to justify reopening.

1. Petitioners Fail to Show a Severance

The Zollers argument boils down to this: subsequent to sale of MP 0.38 to MP 30.8 to RTC for interim trail use/railbanking, "BNSF broke any remaining connection that had existed between the end-point at Lyle and the still-operating BNSF right-of-way that is located south of Highway 14." Zoller Petition at 5. The Zollers cite BNSF deeds to Greg Colt Land Brokers, Inc. to the east side of the right of way from a point south of MP 0.38 in Lyle in 1998, and to Rutledge Hotel for remaining interests in 2003. Zoller Pet. at 5-6.<sup>3</sup>

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<sup>3</sup> The Zoller Petition is supported by three "Declarations": Lorraine Zoller (one of the petitioning parties), Craig Trummel, and Curt Dreyer. The only two arguably discussing title and severance questions are the Trummel and Zoller Declarations. The pertinence of the Dreyer Declaration is obscure. All of the Declarations are unsworn and thus incompetent and unreliable hearsay, insufficient to establish what they assert, and insufficient to establish authenticity of documents which they purport to present, unless they comply with 28 U.S.C. § 1746. Under 28 U.S.C. § 1746, a party may present a statement, and the statement may be relied upon for evidentiary purposes, so long as the party executing the statement declares under penalties of perjury that the contents of the statement are correct. None of the declarations purportedly supporting the Zoller petition so declare. The only thing that they affirm (in the first sentences of each) is that the "foregoing" is true under penalties of perjury. The only "foregoing" so affirmed is the caption of the proceeding and the title of the document. This is no binding attestation at all, for it does not attest that the contents of the Declaration are true and correct. This renders the "Declarations" and their contents and attachments incompetent as evidence. Trail Owners object to any reliance on such incompetent material.

Although not presented by the Zollers, it appears that the original granting deed for the Goldendale Branch right of way as it appears in section 34 (the section containing Highway 14 in Lyle) is T. Balfour to Columbia River and Northern Railway Co., dated May 4, 1904. That deed conveys a fee simple interest in a "strip of land" and would be construed as fee rather than easement under applicable rulings of the Washington Supreme Court. See Exhibit F. Although Trail Owners lacked the time under this Board's procedural rules (20 days for responses) to have title reports prepared on all relevant parcels,<sup>4</sup> Trail Owners have investigated specific property transactions. It does appear that subsequent to the railbanking transaction with RTC, BNSF (in or about 2003) sold (in two transactions) a portion of the Goldendale Branch south of highway 14 to Rutledge Hotel, and that portion includes, for purposes here, approximately 71.5 feet on the east side of the 100 foot wide Goldendale Branch at highway 14. According to Ron Nelson, Manager of Klickitat Land Title in Goldendale, the transactions are described in the "Survey by Taylor Engineering recorded Feb. 14, 2004, as Auditor's Number 1051704." See Exhibit D. But as Mr. Nelson points out, "that survey indicates that BNSF has retained a corridor in the Goldendale Branch that is no less than 28 feet wide south of highway 14 adjacent to the Greg Colt Land Brokers, Inc. property." Id. Pursuant to the Balfour deed

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<sup>4</sup> In any event, the Zoller petition does not purport to present any title reports on any parcel at all, although the Zollers bear the burden of proof.

(Exhibit F), that corridor would presumably be fee-owned by BNSF.<sup>5</sup> Since BNSF retains the corridor, there is no severance.<sup>6</sup>

The Zoller petition in reliance on and in conjunction with the assessor maps presented in the Trummel Declaration (petition Exhibit C) suggest that Greg Colt Land Brokers, Inc. now owns the west half of the Goldendale Branch south of highway 14 in Lyle. In particular, the Zoller petition argues that BNSF does not own the western side of the Goldendale Branch south of highway 14, and that Greg Colt Land Brokers does on the basis of the Trummel Declaration, and in particular its "Attachment 5." Attachment 5 is itself a five page document, the first four pages of which is a quitclaim deed from BNSF to Greg Colt Land Brokers, Inc., and the fifth page is a survey. The first thing to note about Attachment 5 is that the survey bears a date (1995) substantially earlier than the deed (1998), which should raise some skepticism about whether the documents are related.

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<sup>5</sup> In corroboration, the deed descriptions for the Rutledge Hotel sales (attachment 7 to Zoller Petition Exhibit C) insofar as relevant to the Goldendale Branch right of way for the parcel involved appear to correspond to the deed description in the 1904 T. Balfour deed to the corridor.

<sup>6</sup> In dealing with claims of severance, this Board has indicated that railroads could sell surplus property so long as they retained a corridor "sufficient for safe rail operations." CKR Dec. 8, 1999 decision, at note 2. The Federal Railroad Administration issues rules governing railroad safety. The FRA clear distance standards for obstructions of unlimited height above the rail surface is 10 feet from centerline of track. This suggests that the absolute minimum for safe rail operations is no less than 20-feet wide right of way. FRA regulations allow operation of railroads inside city streets and roadways without any separation provided there are no obstructions above rail surface. A retained right of way width of 28 feet should therefore be sufficient to preclude a finding of severance.

As discussed in footnote 3, supra, none of the Declarations presented in support of the Zoller petition is in proper form, even to authenticate a document, and Trail Owners object to any reliance on such improper material by the petitioners. In the case of Attachment 5, the purported five page document is clearly not authentic taken as a whole. The first four pages of Attachment 5 purports to quitclaim certain interests adjacent to the BNSF mainline to Greg Colt Land Brokers in the SE4SW4 of Section 34. But the Goldendale Branch is in another legal subdivision: the SW4SE4 of Section 34. The BNSF deed on which Trummel and the Zoller Petition rely thus does not convey anything in the Goldendale Branch to Greg Colt Land Brokers. See Letter, Nelson to Montange, Feb. 23, 2005, para "first".

In confirmation that Zoller petition's Attachment 5 is an amalgam of unrelated material, Mr. Nelson notes that the survey which is page 5 of Attachment 5 is from another deed. Finally, as Mr. Nelson states, "I am aware at this time of no ... deed purporting to convey property in the Goldendale Branch to Greg Colt Land Brokers, Inc." Id. Id.

Mr. Nelson goes on to explain that the assessor's maps on which the Trummel Declaration (and thus the Zoller petition) rely for purposes of their discussion germane to the severance issue "do not appear to be accurate." Id. para "Third."<sup>7</sup>

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<sup>7</sup> The fact that track has been removed from highway 14 does not indicate some kind of severance at the highway. BNSF's predecessor in interest granted an easement to the State to cross the railroad at grade with a highway, and the State is required under the easement to bear all crossing costs. See

In sum, the Zoller petition fails to carry its burden of showing that a severance has occurred. The "evidence" on which the petition relies is not competent under 28 U.S.C. § 1746, the assessor's maps are not accurate, Attachment 5 to Exhibit C is a misrepresented shuffling of deeds and surveys, and the apparently relevant underlying deed to BNSF's predecessor in interest grants fee title to BNSF to the relevant portion of the Goldendale Branch. Since Trail Owners have shown (through the Balfour deed and the Taylor Survey) that BNSF owns an apparent fee simple absolute interest in a corridor in the Goldendale Branch at least 28 feet wide south of Highway 14, and since this corridor links to BNSF property which the Zoller petition admits is contiguous to the mainline, there is no severance as a matter of fact. At the very least, under this Board's applicable precedent, if the Zoller petitioners disagree with Trail Owners' analysis here, then they need to resolve the question of who owns what in state court before they can proceed with a de-railbanking petition before this Board. CKR May 8, 2001 decision (petitioners must "seek a state court ruling on the underlying state property law issues"). In the meantime, the petition to reopen must be denied. Id.

2. Severance by BNSF Is Necessarily Irrelevant Here

Even if the Zollers were somehow correct about the BNSF deed to Greg Colt Land Brokers, Inc., or contrived some new explanation for their unsupported claims, it is undeniable that

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Exhibit G (easement).



KTC is Grantee of an open space easement from Greg Colt Land Brokers, Inc., encompassing rail reactivation rights. See Appendix III to Verified Statement of Pamela Essley (Ex. B). KTC's easement is immediately adjacent to the western boundary of the Goldendale Branch immediately south of Highway 14, and is 25 feet wide. It is obviously sufficient for rail reactivation as it stands.<sup>8</sup> If the Zoller petition were correct that Greg Colt Land Brokers owns up to the centerline of the Goldendale Branch (or even beyond), then the open space easement would cover all of that ownership as well. In other words, it would cover any relevant ownership of Greg Colt Land Brokers in the Goldendale Branch south of Highway 14 in section 34. If Greg Colt Land Brokers owned to the centerline as contended in the Zoller petition, then the easement is 75 feet in width.

As Union Pacific R. Co., supra, AB 33 (Sub-no. 158X), served August 28, 2003, indicates (see Exhibit E), third party-supplied right of way is adequate to establish any connection necessary to avoid a material severance. KTC's open space and rail reactivation easement insures that there is no severance.

"In order absolutely to ensure [the corridor's] preservation against contrived claims of severance, Klickitat Trail Conservancy has secured an open space and rail reactivation easement from Greg Colt Land Brokers, Inc. south of State Highway 14 in Lyle. On behalf of the Klickitat Trail Conservancy, I declare that it is our intent through this easement that the land in question will always be available for rail reactivation, rendering forever irrelevant claims by opponents that there is or could ever be a severance that had any material adverse impact on ability to reactivate rail service on the premises."

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<sup>8</sup> See note 6 supra.

B. Robinson V.S. para 4 (Ex.C).

In short, even if BNSF had somehow sold off the entire width of the Goldendale Branch in the non-railbanked portion south of Highway 14, or even if BNSF did not own a fee and the land somehow automatically reverted, there is here now and forever will be a corridor at least 25 feet wide, and perhaps as much as 75 feet wide (if the Zoller petition were ever correct), for a railroad through the allegedly severed area. In this case, it is simply not possible to find a severance, or at least to find a severance with any adverse impact on rail restoration. Petitioners for this independent reason have failed to bear their burden of showing not only (a) that there has been a severance but also (b) that the severance renders impossible rail reactivation on the railbanked facility. CKR Dec. 8, 1999 decision, text at note 12 (petitioners must show that severance is such that rail service "cannot be restored").

Additionally, petitioners fail to explain how loss of approximately 100 feet of corridor, assuming arguendo it occurred, somehow rendered rail reactivation of the remaining roughly 31 miles impossible. BNSF, like railroad corporations generally in Washington, has power of eminent domain. E.g., RCW 81.36.010. Under Union Pacific R. Co., supra, AB 33 (Sub-no. 158X), served August 28, 2003 (see Exhibit E), availability of the eminent domain remedy also defeats a claim of severance.

Petitioners suggest (on the basis of unsworn, improperly attested and thus incompetent hearsay from one Curt Dreyer, see

note 3 supra) that it would cost at least \$9,000,000 to reconstruct rail on the corridor (Zoller Pet. at 17).<sup>9</sup> But if that is the case, then use of eminent domain to secure about 100 feet of undeveloped land in Lyle is obviously trivial and hardly an impediment to rail reactivation.<sup>10</sup> In confirmation, the open space easement obtained by KTC from Greg Colt Land Brokers on its face cost only \$5000, an amount trivial (less than a tenth of a percent) in comparison to what the Zoller petition claims will be overall restoration costs. Obviously such an expense in no way precludes rail reactivation. Again, we have an abject failure on the part of petitioners to come to grips with reality. They do not come remotely close to discharging their burden of proof that anything has happened that precludes rail reactivation on the railbanked portion of the old Goldendale Branch.

### 3. The Severance Issue is Overstated

Finally, Trail Owners urge this Board to think carefully

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<sup>9</sup> To the extent the Zoller petition suggests that reconstruction costs to re-construct roadbed or to relay tracks and ties, render the line ineligible for railbanking, the petition is headed up a blind alley. The idea behind railbanking is merely to preserve a right of way sufficient for rail restoration. If the right of way is not preserved, it may be impossible to construct a railroad regardless of cost.

<sup>10</sup> Again, it should be emphasized that according to the maps on which the Zoller petition relies, the only severance claimed by the petitioners is south of highway 14 for roughly 100 feet. The Zoller petition does not dispute that BNSF continues to control land abutting its adjacent Columbia River mainline. The Goldendale Branch south of highway 14 approached the mainline and then ran along it for most of the distance from MP 0.38 to MP -0.1, serving among other things as a long side track to the mainline. See Exhibit I (map).

concerning the direction it takes at this time in connection with the so-called severance issue. The Zoller petition mounts a technical attack on railbanking predicated on the notion that this Board necessarily loses jurisdiction over a railbanked line if the railroad in a subsequent action sells a parcel "severing" the railbanked line from portions of the rail system over which this Board continues to have jurisdiction. The Zoller petition's entire argument in this regard is predicated essentially on one case, RLTD Railway Corp. v. STB ("RLTD"), 166 F.3d 808 (6th Cir. 1999), which stands for the proposition that the Board can take the view it no longer has jurisdiction in the first instance over an alleged operating rail line if that line has been severed from the interstate rail network.

RLTD certainly does suggest that a line should be part of the interstate rail network when railbanking by order of the Board is first imposed. But RLTD in effect merely upheld as reasonable this Board's determination that it lost jurisdiction for purposes of an abandonment proceeding over a segment of rail line (for which abandonment at one time had been authorized although not necessarily technically consummated with a timely filing of consummation notices) once that "line" was severed from any connection to the interstate network by an intervening abandonment.

Trail Owners are not persuaded that broad readings of RLTD are correct. This Board's predecessor repeatedly took the view that unilateral (i.e., de facto) abandonments were not lawful,

and that parties could not by private contract (be that sales, leases, or licenses, or other purported creation or termination of rights) defeat the jurisdiction of the federal rail regulatory agency. To the extent RLTD conflicts with these long lines of authority, it is wrongly decided.

Moreover, many rail lines (e.g., spurs, side tracks, excursion rail lines) are not regulated by STB. This does not mean they are ineligible for railbanking under § 1247(d); it only means that the parties must apply § 1247(d) by private agreement meeting the requirements of the second sentence of 16 U.S.C. § 1247(d). That sentence does not require any intermediation or action by STB; it merely provides that any transfers for interim trail use that are subject to rail restoration shall not be deemed abandonment for state and local purposes.

The Zoller petitioners in effect are urging that the RLTD logic now must be extended to apply in situations where railbanking has occurred, and a connecting segment of line is then lost by reason of sales to third parties or other private contracts (e.g., easement extinguishments). Whether connectivity of a lawfully railbanked facility to operating rail lines is a question left open by the D.C. Circuit in Jost, as this Board recognized in the CKR cases, supra.

In Union Pacific R. Co., supra, AB 33 (Sub-no. 158X), served August 28, 2003, this Board addressed the question of severance left open in Jost and the CKR cases. In the Union

Pacific, the Board in effect indicated that severance is not problematic if alternative corridors are available over third-party owned rights of way, or if a railroad can re-assemble a linkage through use of eminent domain. See Exhibit E. The Board has left open the question whether severance by third parties outside the railbanked corridor should matter at all.

It should not. Even if RLTD states a proper rule for invocation of STB jurisdiction in the first instance, it is not apposite when STB jurisdiction was lawfully invoked in the first instance (or where STB never had jurisdiction in the first place as with respect to excursion lines, or spurs). Once STB's jurisdiction was lawfully invoked, and STB issued an order implementing a remedy under § 1247(d), the proper analogy is to something like the doctrine of repose. Under that doctrine, actions lawfully taken in reliance on title should not be revisited at arbitrary future points. The basis of the doctrine is to avoid disruption and uncertainties that would result from upsetting expectations based on transactions lawful at the time they were undertaken.

16 U.S.C. § 1247(d) is a special remedy to preserve whatever rail corridors can be preserved without cost to current rail shippers (and railroads). As the Supreme Court said in Preseault v. ICC, 494 U.S. 1, 19, 110 S.Ct. 914, 925-26 (1990),

"Congress did not distinguish between short-term and long-term rail banking, nor did it require that the [Interstate Commerce] Commission develop a specific contingency plan for reactivation of a line before permitting a conversion [to interim trail use]. To the contrary, Congress apparently believed that every line is a potentially valuable national

asset that merits preservation even if no future rail use for it is currently foreseeable. Given the long tradition of congressional regulation of abandonments, see, e.g., Colorado v. United States, 271 U.S. 153, 46 S.Ct. 452 (1926), that is a judgment that Congress is entitled to make."

The key here is, as the Supreme Court pointed out, that Congress did not distinguish the long term from the short term for railbanking purposes. A railbanked line severed from the interstate freight rail system may not be a candidate for short term reactivation, but in the longer haul, when fossil fuels are depleted or demographics shift, preservation of any portion of a line may be seen as an incredibly prudent action. The words of the First Circuit in Reed v. Meserve, 487 F.2d 646, 649-50 (1973), are germane here:

"To assemble a right of way in our increasingly populous nation is no longer simple. A scarcity of fuel and the adverse consequences of too many motor vehicles suggest that society may someday have need either for railroads or for the rights of way over which they have been built. A federal agency charged with designing part of our transportation policy does not overstep its authority when it prudently undertakes to minimize the destruction of available transportation corridors painstakingly created over several generations."

Congress has nowhere provided that a line automatically loses its railbanked status because of an intervening sale of property necessary for a connection. That would make no sense for the federal railbanking remedy, as the Supreme Court has noted, is intended to apply to "long-term" situations as well as to the immediate future.

This Board should give a practical, workable construction to 16 U.S.C. § 1247(d) that recognizes it is intended to preserve corridors indefinitely into the future. 16 U.S.C. §

1247(d) authorizes parties to acquire railbanked former railroad rights of way by donation, sale or lease. In most instances, the railbanked corridors are deeded to the "trail" owner. The trail owner frequently makes a large investment in the corridor, often to acquire it, and certainly to develop it or to maintain it. If this investment were forever subject to arbitrary loss due to actions by the railroad or by third parties on non-railbanked portions of rail line connecting the railbanked corridor to the "mainline,"<sup>11</sup> then it would be difficult to find "trail managers" willing to assume responsibility (acquire and maintain) the corridor. Section 1247(d) would be an unreliable remedy over any significant period of time. This would frustrate Congress' intent that § 1247(d) be broadly applied, not just for short term railbanking but for long term railbanking as well.

It should be enough that the party which is responsible for management of the railbanked line (i.e., the trail manager) under the applicable NITU or CITU comply with its "statement of willingness" (required from the trail manager under 49 C.F.R. § 1152.29) by continuing to meet all the requirements of that "statement" and by itself taking no actions which preclude rail

---

<sup>11</sup> If subsequent "severances" were allowed to upset previously railbanked trails, then many and perhaps most or even all railbanked trails would be at constant risk. Railroads frequently seek to abandon branch lines in stages. Since rail ownership and management changes over time, and since funding levels vary, in many instances there will be cases where a railbanked segment eventually becomes "severed" and very few cases in which anyone can depend forever that a corridor will not.



reactivation over the railbanked portion of a former rail line.

There is no question that the railbanked portion of the Goldendale Branch has been kept intact by Trail Owners. See Declaration of Jim Harris (State Parks, Exhibit A):

"The Commission's directive to staff ... is to preserve the trail and to keep it open to the public."

Petitioners allege no sales by Trail Owners, and there have been none. This 30.43 mile remains a valuable national asset even if a segment, whether 100 feet or a thousand feet, or even more, needs to be re-acquired from a third party in order to re-establish a connection to an operating railroad.

#### E. Other Issues

The Zoller petition and the improper and non-complying (see note 32 supra) Declarations filed therewith spills some ink on the question of ownership of the Goldendale Branch at and around Uecker Road (roughly MP 30.8) on the Goldendale Plateau. For example, the Zoller Declaration (Petition Exhibit A, para 6) claims that the roadbed has disappeared ("no physical presence") west of Uecker Road, and that it eventually disappears to the east as well. This is not true. As the photographs annexed to the Pamela Essley Verified Statement (Exhibit B) indicate, the roadbed very much exists west and east of Uecker Road as shown in photographs taken on February 20, 2005 (roughly two weeks after Zoller's claims) and posted on KTC's website. KTC provides maintenance and clean-up all the way along the corridor, which is continuous from Lyle to Uecker Road. B.

Robinson V.S. para 2 (Ex. C).

Adding to the puzzle of what petitioners want concerning the Trail at MP 30.8, the improper documents filed by the Zoller petitioners appear to assert that the Goldendale Branch is owned either by the Park Commission or BNSF from Lyle all the way up to and including Uecker Road. Trail Owners agree that at least this is the case.

Neither Trail Owners nor, to our knowledge, BNSF claims that this Board still has jurisdiction over the line from MP 30.8 to its old terminus at Goldendale. Ms. Zoller attaches to her Declaration a state court quiet title order for some properties between MP 30.8 and Goldendale, demonstrating that there is no confusion concerning this Board's jurisdiction in that area. Trail Owners thus do not understand what relief the Zoller petition seeks in connection with MP 30.8 to Goldendale. If the petitioners are concerned about the exact location of the terminus or about legal title to a particular parcel, they should visit the state court, not this Board, for boundary or title determinations. That certainly is what the CKR cases, supra, indicate is the proper approach.

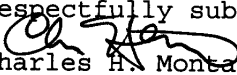
The Zoller petitioners raise no other issues concerning Trail Owners' compliance with applicable legal requirements.

#### V. Conclusion

Since the Zoller petitioners have failed to meet their burden of proof to reopen these proceedings, they most definitely should not be reopened. The Zoller petition presents

no material error, nor does it present new evidence or changed circumstances that remotely come close to justifying a reopening of these proceedings.

Respectfully submitted,

  
Charles H. Montange  
426 NW 162d St.  
Seattle, WA 98177  
(206) 546-1936  
Counsel for Klickitat Trail  
Conservancy and Rails to Trails  
Conservancy

Andrea Ferster  
General Counsel  
Rails to Trails Conservancy  
1100--17th St., N.W.  
Washington, D.C. 20036  
(202) 974-5142  
for Rails to Trails Conservancy

Barbara Herman  
Assistant Attorney General  
P.O. Box 40100  
Olympia, WA 98504-0100  
(360) 586-4034  
for Washington State Parks and  
Recreation Commission

#### Exhibits

Exhibit A: Declaration of Jim Harris (State Parks)  
Exhibit B: V.S. of Pamela Essley (KTC) with open space easement  
Exhibit C: V.S. of Barbara Robinson (KTC)  
Exhibit D: Verified Letter, R. Nelson to C. Montange with  
Taylor Survey  
Exhibit E: City of Marquette material  
Exhibit F: Balfour deed and opinion memo  
Exhibit G: RR easement to state for hwy 14  
Exhibit I: topo map Lyle area

Exhibit A

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**Docket No. Ab-6; Sub Nos. 346X and 335X**

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BURLINGTON NORTHERN RAILROAD COMPANY—ABANDONMENT EXEMPTION—  
IN KLIKITAT COUNTY, WA, (Sub-No. 346X)  
and,  
BURLINGTON NORTHERN RAILROAD COMPANY – ABANDONMENT EXEMPTION –  
BETWEEN KLIKITAT AND GOLDENDALE, WA,  
(Sub No. 335X)

---

**DECLARATION OF JIM HARRIS**

---

I, Jim Harris, make this Declaration on behalf of the Washington State Parks and Recreation Commission (State Parks) in opposition to the Petition to Reopen filed by Zoller, et al., in the above-captioned proceedings.

1. I am the Region Manager for the Eastern Region of State Parks. In that position, I am responsible for management of the Klickitat Trail. State Parks has installed informational signing, public safety features, and fencing at the request of adjacent land owners and has also improved fish habitat through capital expenditures. State Parks has an agreement with Klickitat Trail Conservancy (KTC) by which KTC provides basic cleanup, weed control, sanitation, and

DECLARATION OF JIM HARRIS

1

ATTORNEY GENERAL OF WASHINGTON  
1125 Washington Street SE  
PO Box 40100  
Olympia, WA 98504-0100  
(360) 753-6200

other services for the Trail, mainly through local volunteers. We have been very pleased with KTC's performance under the agreement.

2. State Parks has taken no action to dispose of any portion of the Klickitat Trail as acquired from Rails to Trails Conservancy pursuant to deed and a modified Notice of Interim Trail Use.

3. State Parks is run by a seven member citizen's Commission. The Commission is very supportive of preserving and developing the Klickitat Trail for recreational use by the public. The Commission's directive to staff in a nutshell is to preserve the trail and to keep it open to the public.

4. State Parks has publicly supported and encouraged National Recreational Trail designation for the Klickitat Trail.

5. The Commission believes that the Trail is an asset to the State of Washington and in effect has rejected efforts by trail opponents to stop the use of the trail.

I, Jim Harris, declare under penalty of perjury that the foregoing is true and correct.

DATED this 25 day of February 2005, at Wenatchee, Washington.


  
\_\_\_\_\_  
Jim Harris, Eastern Region Manager  
Washington State Parks and Recreation Commission

Exhibit B

BEFORE THE SURFACE TRANSPORTATION BOARD

Burlington Northern Railroad	)	
Company -- Abandonment Exemption --	)	AB 6 (Sub-no. 346X)
in Klickitat County, WA	)	
Burlington Northern Railroad	)	
Company -- Abandonment Exemption --	)	AB 6 (Sub-no. 335X)
in Klickitat County, WA	)	

Verified Statement of Pamela Essley

I, Pamela Essley, make this verified statement for use by, and at the request of, Klickitat Trail Conservancy (KTC) and Rails to Trails Conservancy (RTC) in opposition to the Petition filed by Zoller, et al. in the above-captioned proceedings.

1. I am a member of the board of directors of KTC, and also serve as its Treasurer and webmaster. In the latter capacity, I take photographs for KTC, and maintain KTC's website. I reside in Lyle, Washington. I have been a resident of Klickitat County for four years. I am very familiar with the former Burlington Northern Railroad corridor from Lyle to Goldendale (the "Goldendale Branch").

2. KTC is an Internal Revenue Code 501(c)(3) non-profit corporation with a membership comprised chiefly of Klickitat County residents and citizens of adjacent counties in Washington, and Oregon. We currently have approximately 160 members. KTC's "mission statement" is "to preserve and promote the public use of the 31 mile Klickitat Trail as a recreational, cultural, natural, educational and economic asset of Klickitat County." Although the



Washington State Parks and Recreation Commission owns the Klickitat Trail, KTC is a party to a cooperative agreement under which KTC has raised money and supplied volunteer assistance to defray the state agency's costs and burdens in maintaining the Trail. To this end, KTC sponsors work parties to pick up trash and control noxious weeds on the Trail. KTC also sponsors hikes, bike rides, nature walks, and kids' activities on the Trail. I attach photographs of some of these activities as Appendix I to this Verified Statement.

3. The Klickitat Trail enjoys the strong support of the vast majority of the citizens of Lyle and Klickitat, and we believe it also enjoys the support of the majority of persons owning land adjacent to it. The former railroad right of way corridor provides the only route for possible future rail to reach the Goldendale Plateau. The route was originally laid out in order to bring grain and other products from the Plateau down to the Columbia River to market.

4. In Lori Zoller's "Declaration" (Exhibit A to the aforementioned Petition) dated February 3, 2005, Ms. Zoller at paragraph 6 asserts that "there is no physical presence of the [former railroad] right-of-way west of [Uecker Road]." This statement is not true. Ms. Zoller also claims that the right of way has been "farmed over" east of Uecker Road.

This statement is potentially misleading. As my photographs taken February 20, 2005 indicate, the roadbed of the right-of-way is

intact and physically present west of Uecker Road. Indeed, it descends through Warwick into the Swale Creek Canyon and continues to Lyle. The roadbed is also physically present on the east side of Uecker Road, although it eventually becomes part of ranching operations on the Plateau. My photographs are attached as Appendix II to this Verified Statement. I have also placed my Uecker Road photographs on the KTC website, at

<http://www.klickitat-trail.org/railbed.htm>.

5. Assuming for the sake of argument that connectivity between the Burlington Northern mainline on the north side of the Columbia River and the Klickitat Trail must be maintained for "railbanking" (reactivation of rail) purposes, KTC has acquired an easement from Greg Colt Land Brokers, Inc., covering all that owner's land east of a line drawn parallel to, and 25 feet at right angles from, the western boundary of the former railroad right of way south of State Highway 14 in Lyle. This easement, which is no less than 25 feet wide, limits the use of the relevant portions of Greg Colt Land Brokers, Inc. property to open space uses and encompasses rights for rail reactivation. It connects the Klickitat Trail to the Burlington Northern property abutting the active railroad mainline. KTC intends to transfer the easement to the "interim trail manager" to maintain in conjunction with the Klickitat Trail. A copy of the easement as recorded is attached as Appendix III to this Verified Statement.

I, Pamela Essley, declare under penalty of perjury that the foregoing is true and correct.

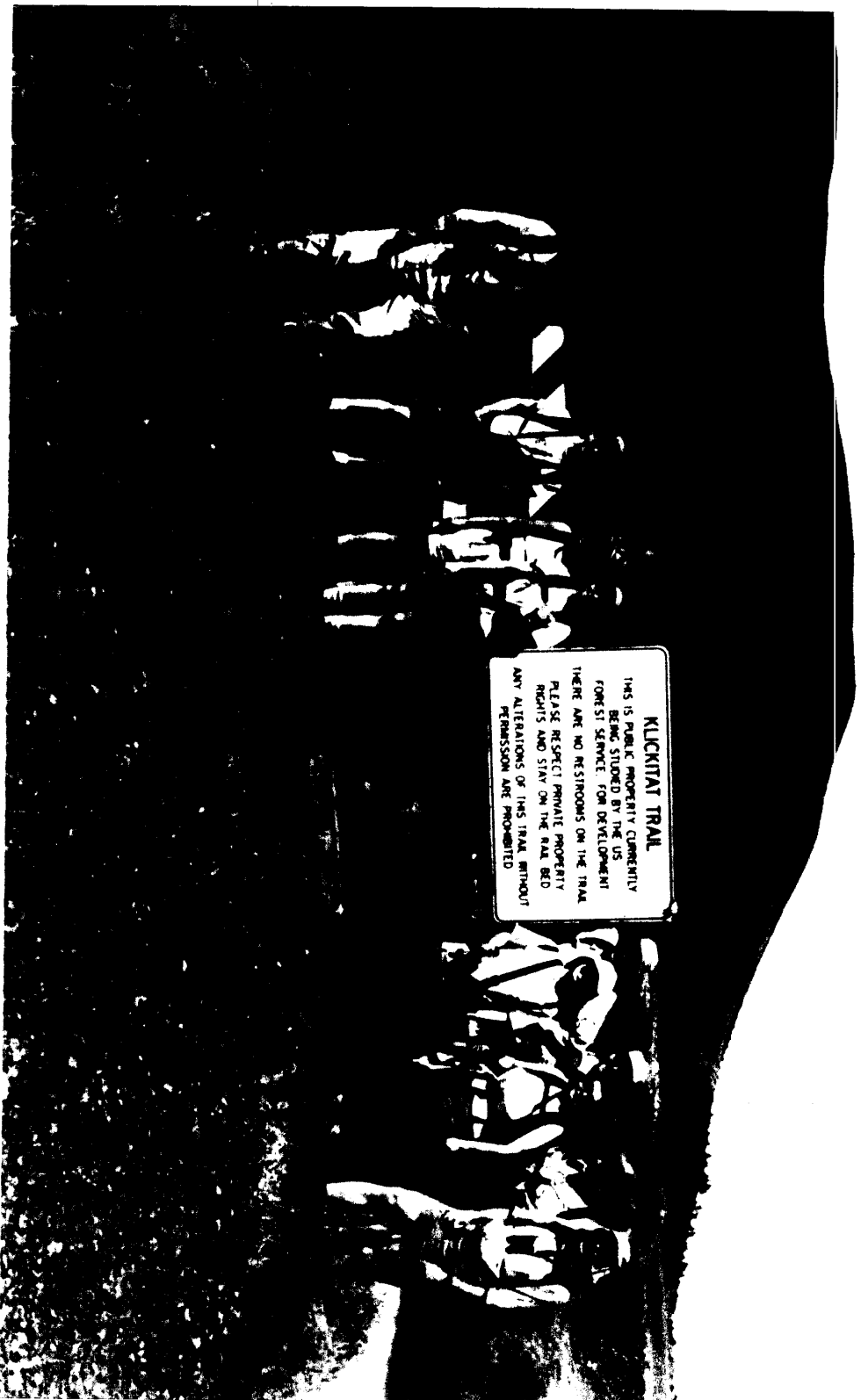
Pamela Essley  
Pamela Essley

Dated: 2/24/05

Appendix I: photographs, activities on Klickitat Trail,  
including maintenance  
Appendix II: photographs, Uecker Road  
Appendix III: open space easement

Essley  
Appendix I

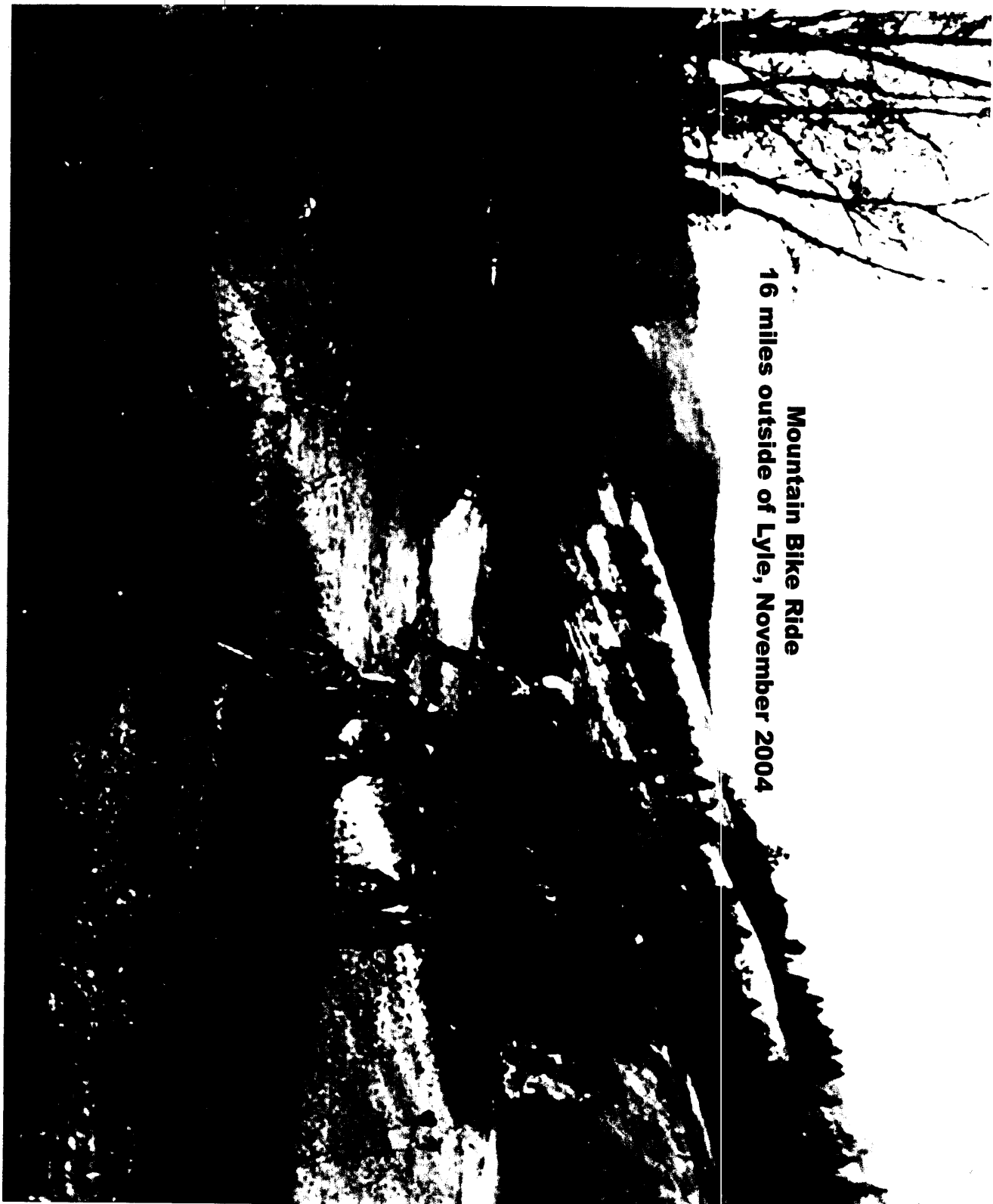
# Swale, Spring 2004



**Ways and Friends of the Gorge  
Joining the trail together  
March 2003**



**Mountain Bike Ride**  
**16 miles outside of Lyle, November 2004**



**Multnomah Athletic Club hike starting out in Lyle  
April 2004**





## **Biking Swale, Spring 2003**

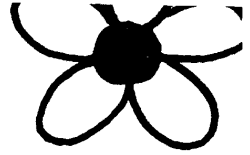
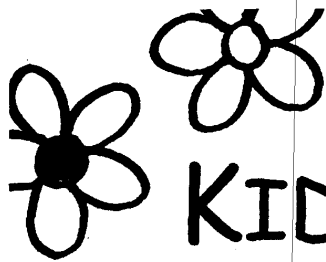


**KTC Volunteers collaborate with State Parks  
in fence building project between Warwick & Uecker Rd.  
December 04**





**Youthful letter payoller**  
**January 2005**



# KID'S NATURE HIKE

Come hike the first 2 miles of the Klickitat River Trail with the "Flower Lady", Barbara Robinson. You will learn about native plants, rocks, animals, and some history of Klickitat County. Walk an old railroad track turned hiking trail! There will be games and fun surprises along the way! Parents are welcome too!

Where: Meet at the Klickitat Trail head  
Hwy 14 across from Greg Colt Realty

When: Saturday May 24 from 12:00-3:00

What to bring:

- Sack lunch
- Backpack with water bottle
- Wear sturdy tie shoes
- Wear a hat and sunscreen

For more information call Pam at 365-3866. This hike is sponsored by Klickitat Trail Conservancy.

---

My child \_\_\_\_\_ has my permission to attend  
the KTC hike on 5/24/03\_\_\_\_\_.



# Nature Walk May 2003



**#2 Looking east from Uecker Rd.  
at the non-railbanked railbed.  
Note the undisturbed easement boundary fences. 2/20/05**

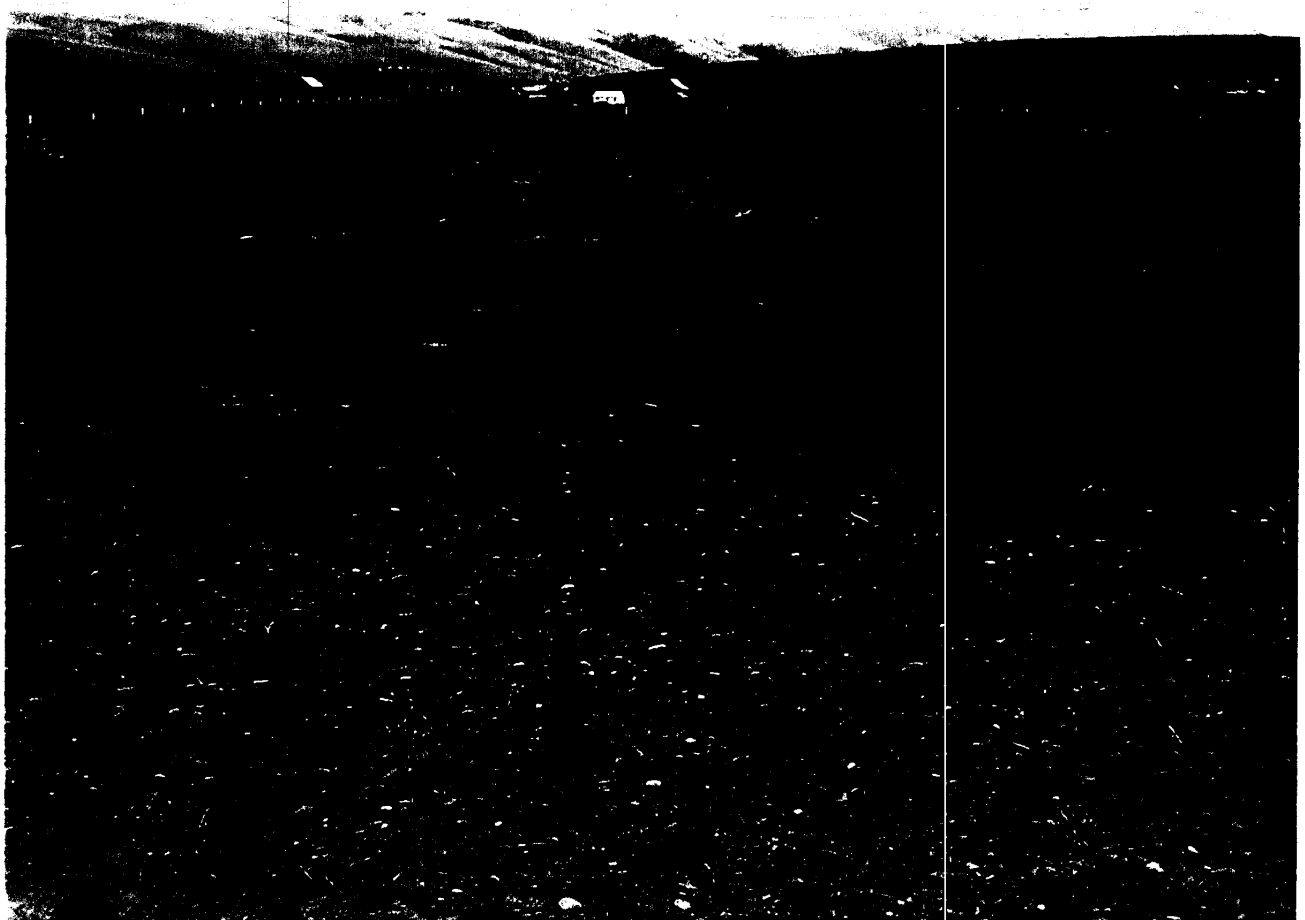


**#3 Same as #2,  
looking east from Uecker Rd.  
2/20/05**

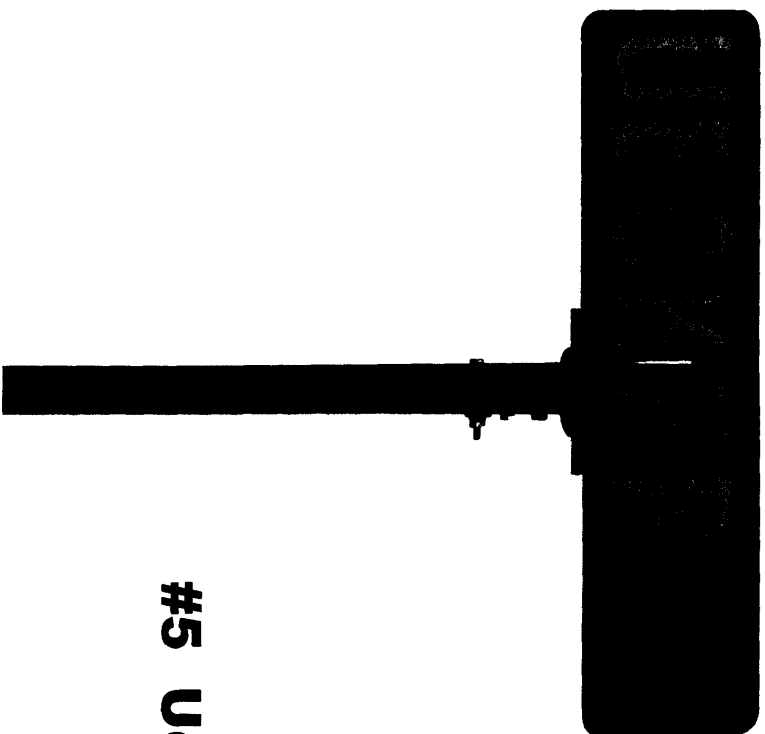


**#4 Looking west across Uecker Rd. down the railbanked  
railbed. Note the easement fence on the left  
and the Lyle-Centerville Hwy. on the right.**

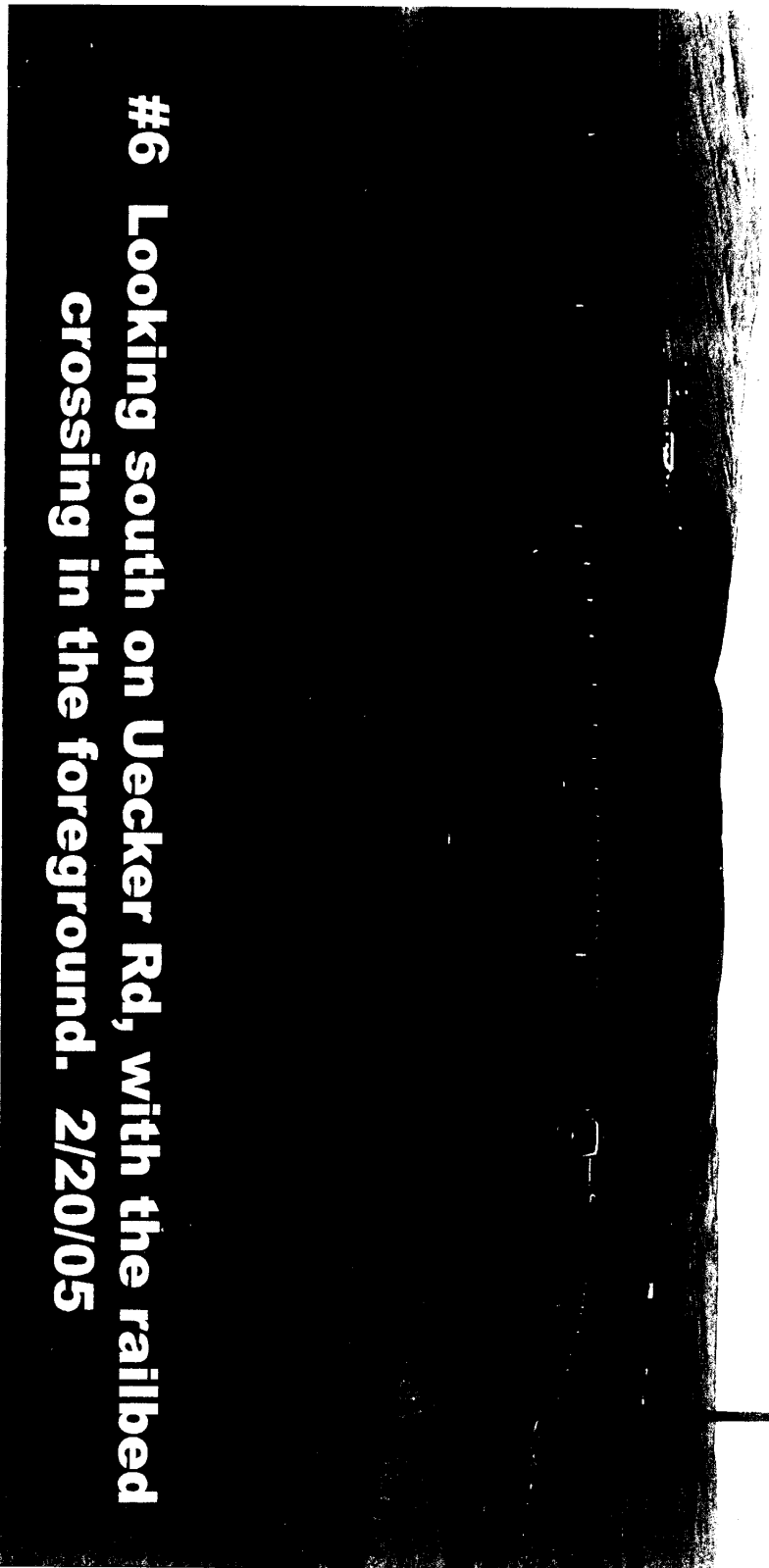
**2/20/05**





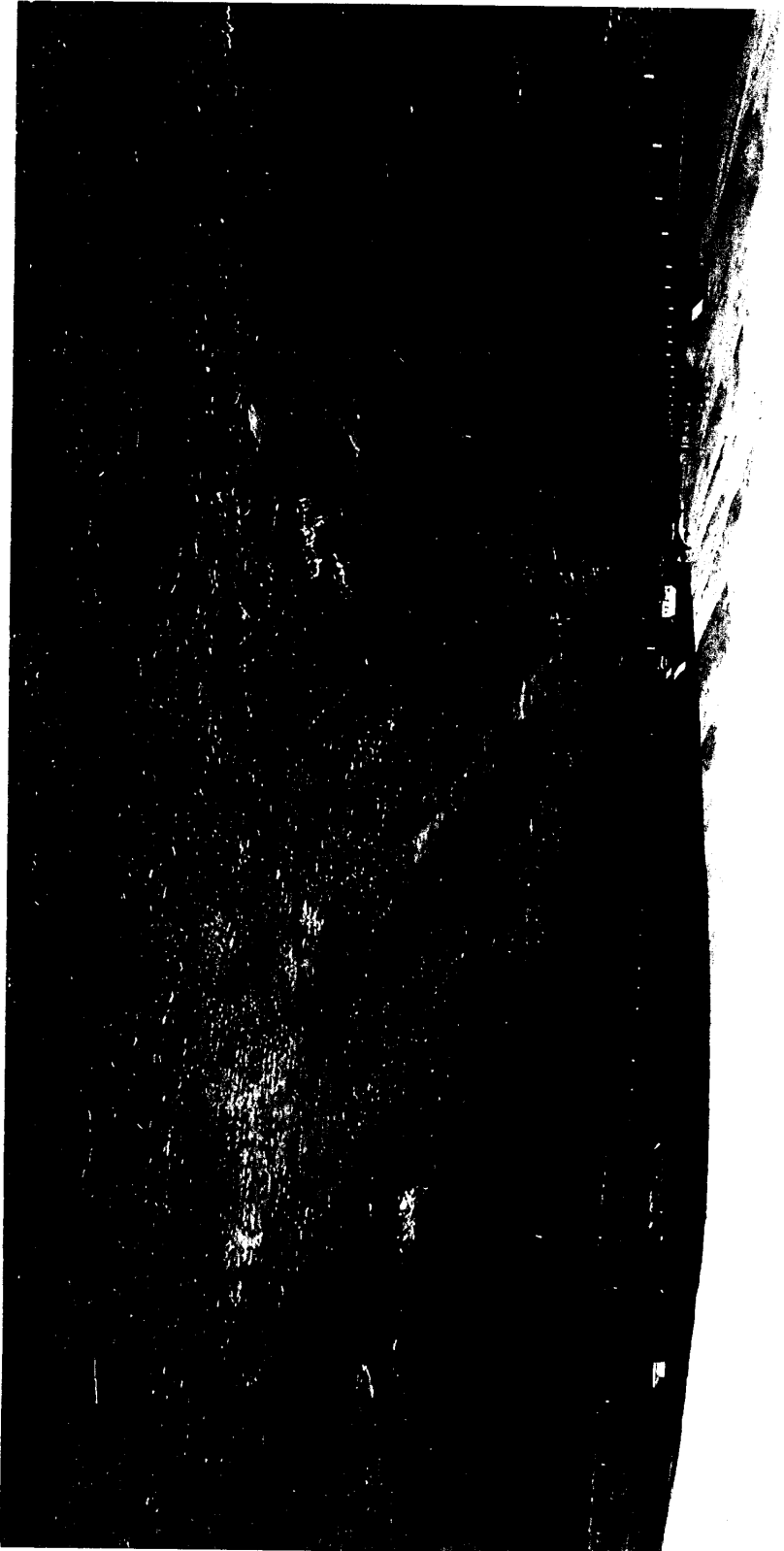


**#5 Uecker Rd. sign**  
**2/20/05**



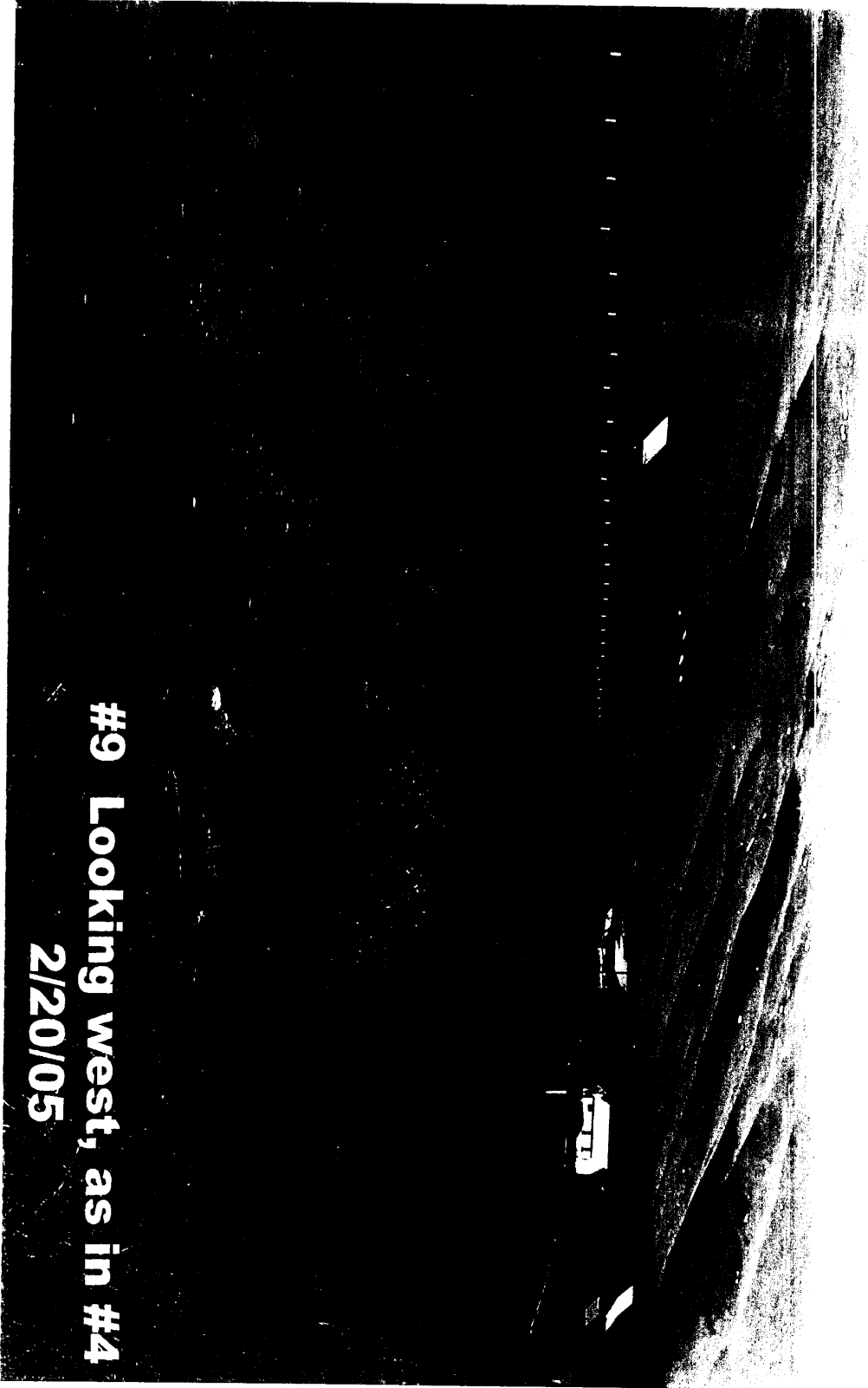
**#6 Looking south on Uecker Rd, with the railbed  
crossing in the foreground. 2/20/05**

**#7 Looking west, as in #4**  
**2/20/05**

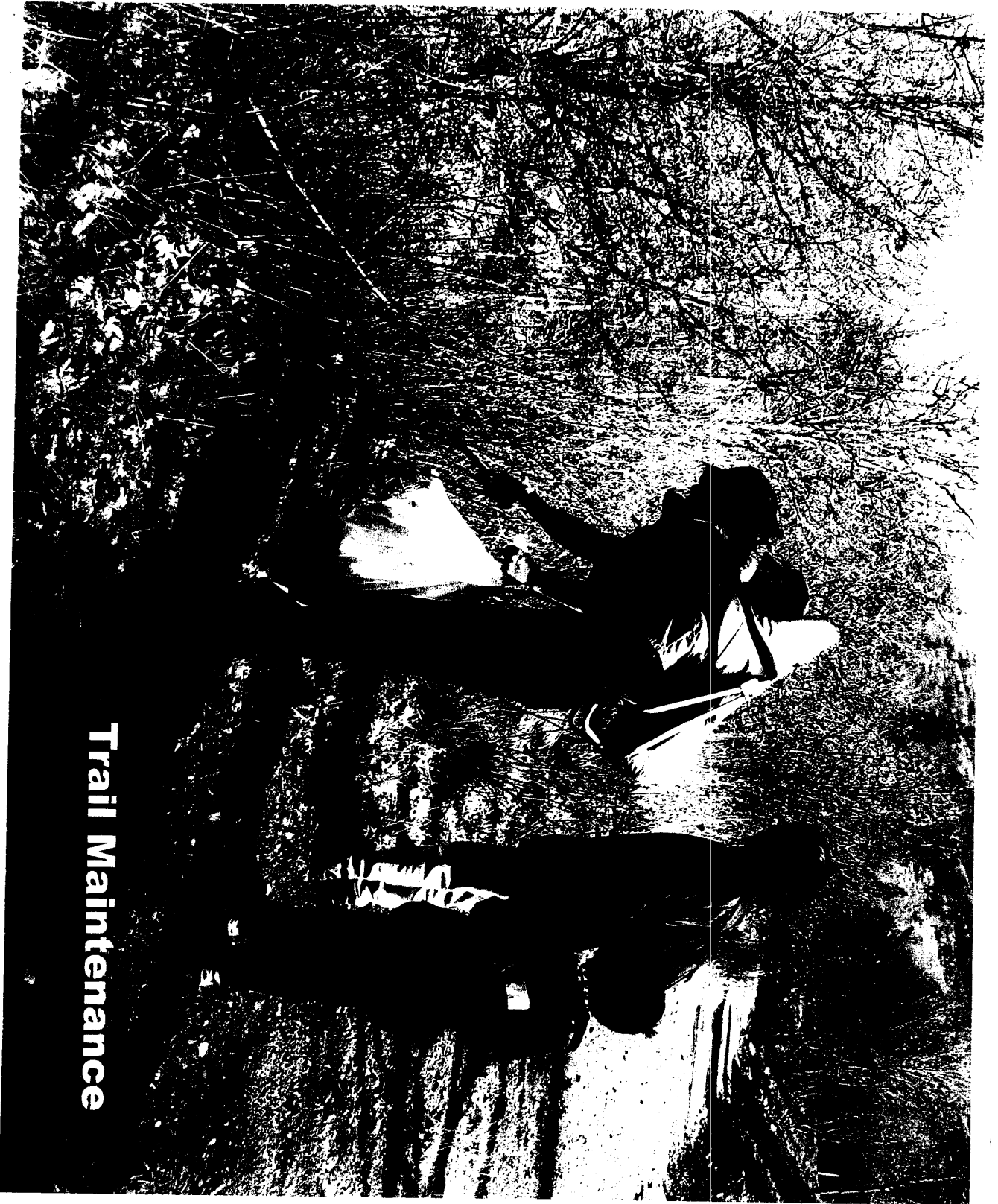


**#8 Looking west, as in #4.  
2/20/05**



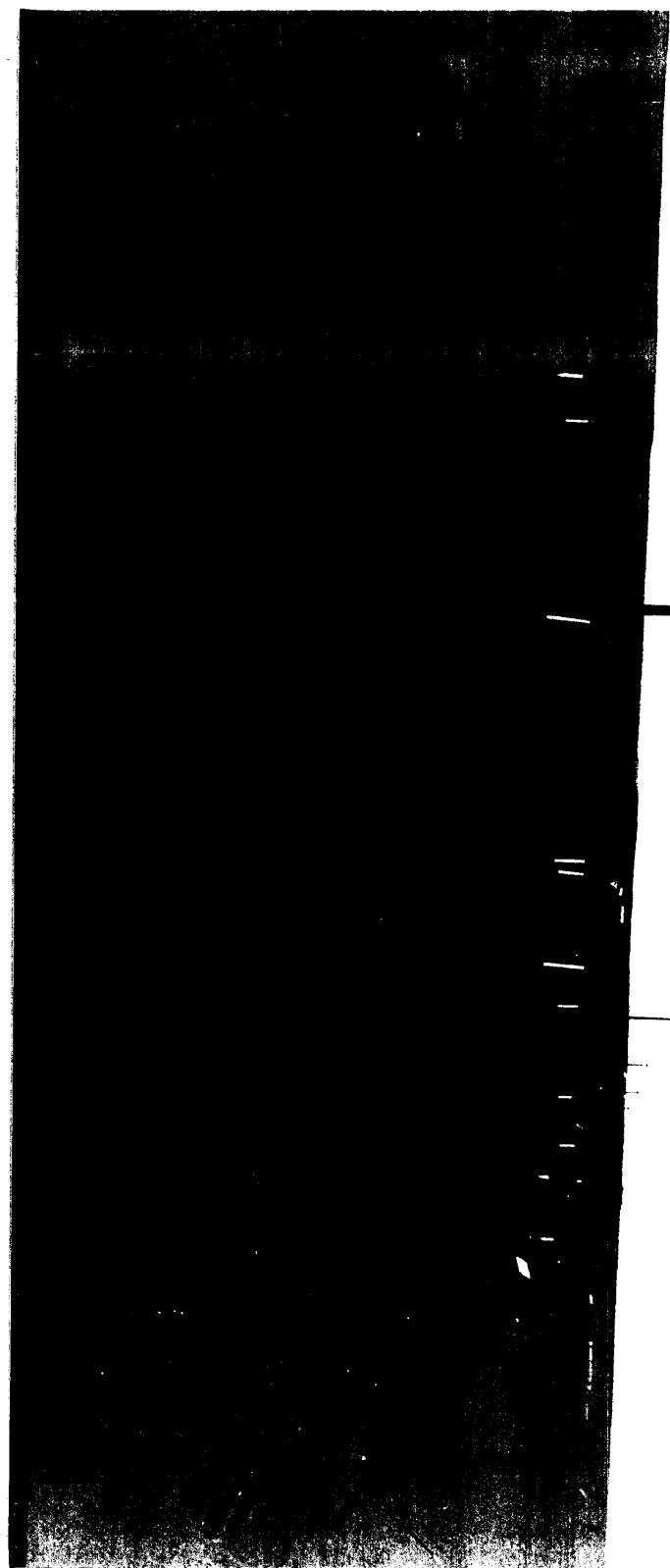


**#9 Looking west, as in #4**  
**2/20/05**



**Trail Maintenance**

Essley  
Appendix II





Essley  
Appendix III



Klickitat Trail Conservancy

1051853

Page: 1 of 2  
02/24/2005 02:46P  
Klickitat Co.

Corrected

Bargain and Sale Deed of Easement

Filed for record at request of:

When recorded return to:

REAL ESTATE EXCISE TAX  
Chapter 82.45 and Chapter 82.46, RCWName: Klickitat Trail Conservancy : 0 has been paidAddress: P.O. Box 512Receipt 071843 Date 2-24-05City, State, zip: Lyle, Wa. 98635 By Paul J. Neenan Deputy

Klickitat County Treasurer

Bargain and Sale Deed of Easement

The GRANTOR, Greg Colt Land Brokers, Inc. (a Washington State Corporation), for and in consideration of five thousand dollars, receipt of which is hereby acknowledged, bargains, sells and conveys to GRANTEE, Klickitat Trail Conservancy (a Washington State non-profit corporation), a perpetual open space easement in gross to restrict to open space, and/or to the construction, operation and maintenance of a railroad by GRANTEE or its Assigns, the use of the portion of GRANTOR's land (herein called "the Open Space") in the south half of Sec. 34, T3N, 12E, W.M., described as follows:

03-12-3400-0006/00

ALL that land of GRANTOR lying east of a line drawn parallel, and twenty five feet at right angles on the west side, to the western boundary of the discontinued branch of the Burlington Northern Railroad (now the Burlington Northern and Santa Fe Railway Company) from Lyle to Klickitat to Goldendale, said discontinued branch also being known as the Goldendale Branch of the Spokane, Portland and Seattle Railroad.

Refer to AFN 1051808

1. Purpose. The purpose of this easement shall be to preserve the Open Space in a fashion compatible with reactivation of railroad use, and in particular so that GRANTEE and its assigns shall not pay, nor be required to pay, any additional consideration to GRANTOR or its assigns for land acquisition or for removal of improvements should rail service be reactivated upon or over any portion of the aforementioned Goldendale Branch, or upon land to which this easement is applicable.

2. Permitted Uses. GRANTOR shall retain the right to employ the Open Space for driveway purposes, egress and ingress to the remainder of its property, and for parking and landscaping.



KLICKITAT TRAIL CONSERVACY

1051853

Page: 2 of 2  
02/24/2005 02:46P  
Klickitat Co.

Assessors Property Tax Parcel/Account Number: 0312 3400 0006/00

This easement shall be construed to apply to any title in the premises subsequently acquired by GRANTOR or its assigns. GRANTOR for itself and for its successors in interest does by these presents expressly limit the covenants of the deed to those herein expressed, and excludes all covenants arising or to arise by statutory or other implication, and does hereby covenant that against all persons whomsoever lawfully claiming or to claim by, through, or under said GRANTOR and not otherwise, GRANTOR will forever warrant and defend said described easement in real estate.

Greg Colt Land Brokers, Inc., GRANTOR

by:

J. McGregor Colt

Title: President

Dated:

State of Washington )  
 ) ss  
County of Klickitat )

I certify that I know of have satisfactory evidence that J. McGregor Colt is the person who appeared before me, and said J. McGregor Colt acknowledged that he signed this instrument, and on oath stated that he is authorized to execute the instrument and acknowledged it as the president of Greg Colt Land Brokers, Inc., to be the free and voluntary act of Greg Colt Land Brokers, Inc., for the uses and purposes mentioned in this instrument.

GIVEN under my hand and official seal this 24 day of February, 2005.

Kylene A Barnes  
Notary Public in and for  
State of Washington

Residing at White Salmon  
My commission expires: 8/29/07

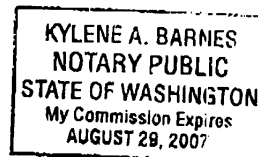


Exhibit C

BEFORE THE SURFACE TRANSPORTATION BOARD

Burlington Northern Railroad                    )  
Company -- Abandonment Exemption --        ) AB 6 (Sub-no. 346X)  
in Klickitat County, WA                        )  
  
Burlington Northern Railroad                    )  
Company -- Abandonment Exemption --        ) AB 6 (Sub-no. 335X)  
in Klickitat County, WA                        )

Verified Statement of Barbara Robinson

I, Barbara Robinson, make this verified statement for use by Klickitat Trail Conservancy (KTC) and Rails to Trails Conservancy (RTC) in opposition to the Petition filed by Zoller, et al. in the above-captioned proceedings.

1. I am a member of the board of directors of KTC, and also serve as Chairman of its Work Committee. As such, I am responsible for organizing and supervising volunteer work parties maintaining the Klickitat Trail.

2. As KTC has indicated in reports to Washington State Parks, from March 1, 2003 to November 1, 2004, KTC members and volunteers working with KTC worked 1384 hours on the Klickitat Trail. We have had work parties for noxious weed control, pruning and trash removal. We also have an active hiking program, including children's hikes, and litter is picked up on all hikes. In this manner, we clean up the trail, work to keep it clean, and educate trail users on good trail etiquette and on trail maintenance. We especially focus on cleanup near Klickitat and Lyle and at trailheads, and where the trail is next to a road. Most litter on

the trail is road-related. We have found that where the trail is not along a road or adjacent to a fishing area, there is almost no litter accumulation. In order to facilitate clean-up and foster community goodwill, KTC effective on May 27, 2004 has also adopted a section of State Highway 142 between Lyle and Klickitat (MP 3.00 to MP 5.57) pursuant to the Washington Department of Transportation Adopt-a-Highway program for litter clean up. This portion is adjacent to the Klickitat (Wild and Scenic) River. The hours of trail work given above do not include time spent cleaning up State Highway 142.

2. KTC undertakes the aforementioned clean-up activities all the way from State Highway 14 in Lyle to Uecker Road on the Goldendale Plateau. The corridor is continuous and evident from Lyle all the way to the east side of Uecker Road. In addition to litter clean up, KTC rents portapotties for the four trailheads for part or all of each year.

3. In addition to my responsibility as Work Committee Chair, I note for purposes of this Statement that I am a retired instructor at Portland Community College with a masters degree in biology. I still teach, chiefly with for the Elderhostel program at Columbia Gorge Community College, where I am responsible for the botany section of a natural history course on the Gorge. I also lead natural history hikes for various groups in the Gorge, including Klickitat Trail Conservancy. The Klickitat Trail in my

opinion is an ideal facility for natural history instruction and exploration. The Trail from Lyle to Klickitat ascends the Klickitat Canyon, and then proceeds up the Swale Creek Canyon to the Goldendale Plateau. It allows people to explore close-up the geologic history of the Pacific Northwest and some unique botanical features of the Columbia Gorge as manifest in the Klickitat and Swale Creek Canyons.

4. Certainly there is no intent to "abandon" or give up on the railbanking of the former railroad corridor comprising the Klickitat Trail. In order absolutely to ensure its preservation against contrived claims of severance, Klickitat Trail Conservancy has secured an open space and rail reactivation easement from Greg Colt Land Brokers, Inc. south of State Highway 14 in Lyle. On behalf of the Klickitat Trail Conservancy, I declare that it is our intent through this easement that the land in question will always be available for rail reactivation, rendering forever irrelevant claims by opponents that there is or could ever be a severance that had any material adverse impact on ability to reactivate rail service on the premises.

I, Barbara Robinson, declare under penalty of perjury that the foregoing is true and correct.

Barbara Robinson

Dated: 2/25/05.

Exhibit D





## Klickitat County Title Company

129 West Main Street, Goldendale, Washington 98620  
1-800-962-9970 ★ 509-773-5804 ★ FAX 509-773-3515

February 23, 2005

Charles H. Montange, Esq.  
426 NW 162nd Street  
Seattle, WA 98177

Counsel for Rail to Trails Conservancy

Re: Zoller Petition for Reconsideration

Dear Charles:

I am the Manager of Klickitat Title Company in Goldendale, the county seat for Klickitat County. I have been in the land title business for forty years. Because of uncertainties inherent in titles involving railroad parcels (e.g., Acts of Congress, Indian filings, and so forth) in Washington State, our office in general will not insure title in rights of way. However, we from time to time do examine title and I am familiar with the Goldendale Branch, which has been a regular topic for the years I have been in Goldendale.

I do not have adequate time to conduct title searches on all parcels potentially relevant in this proceeding. However, I have reviewed material relevant to the Trummel Declaration, attached to the pending Zoller Petition as Exhibit C. Based on what I have reviewed to date concerning parcels south of Route 14 in Lyle, I do not believe that the Trummel Declaration contains sufficient information to show that the railroad has sold off parcels severing the Goldendale Branch right of way. All the information I state below is based on my research to date. I reserve the right to correct it should further information become available. In other words this represents my best efforts in the time available, but further research is necessary for a definitive and binding answer as to who owns what south of highway 14. Based on my research to date, I can say as follows:

First, the quitclaim deed (Auditor's No. 1008065, which is Attachment 5 to the Trummel Declaration), on which the petitioners rely for the proposition that BNSF conveyed its property to Greg Colt Land Brokers, Inc. does not apply to the Goldendale Branch. The deed applies to the SE4SW4 of Section 34. The Goldendale Branch is in the SW4SE4 of Section 34. Some of the original deeds for the BNSF mainline along the Columbia River conveyed a 400 foot right of way. The deed in question related to the mainline, and limits BNSF's mainline claim to 100 feet in the SE4SW4 of Section 34. I am aware at this time of no other deed purporting to convey property in the Goldendale Branch to Greg Colt Land Brokers, Inc. Trummel does not present any such deed in his Declaration. Incidentally, the survey that is page 5 of Trummel's attachment 5 is not part of the deed that is the first four pages, and relates to another deed.

Second, based on my research so far, it appears BNSF has conveyed out its interests in portions of the Goldendale Branch south of Highway 14 as described in the Survey by Taylor Engineering recorded Feb. 15, 2005, as Auditor's No. 1051704. But that survey indicates that BNSF has retained a corridor in the Goldendale Branch that is no less than 28 feet wide south of highway 14 adjacent to the Greg Colt Land Brokers, Inc. property.

Third, based on the information available to me at this time, the assessor's maps on which the Trummel Declaration relies do not appear to be accurate, at least as to the ownership of property in the former Goldendale Branch south of Highway 14 in Lyle.

Fourth, in any event, Klickitat Trail Conservancy has recorded an open space easement over Greg Colt Land Broker, Inc. property east of a line drawn parallel to and 25 feet at right angles to the western edge of the Goldendale Branch.

I realize that you wish to use this information in a proceeding before the Surface Transportation Board. Subject to the limitations in the second paragraph of this letter, I declare under penalty of perjury that the foregoing is true and correct.

Very truly yours,

Ron Nelson  
Manager



Exhibit E

**SURFACE TRANSPORTATION BOARD DECISION DOCUMENT**

**Decision Information**

Docket Number: **AB\_33\_158\_X**

Case Title: **UNION PACIFIC RAILROAD COMPANY--ABANDONMENT  
EXEMPTION--IN MCPHERSON, ELLSWORTH AND RICE COUNTIES,  
KS**

Decision Type: **Decision**

Deciding Body: **Director Of Proceedings**

**Decision Summary**

Decision Notes: **GRANTED THE CITY OF MARQUETTE, KS'S REQUEST TO EXTEND  
THE INTERIM TRAIL USE NEGOTIATING PERIOD UNDER THE NITU  
FOR THE PORTION OF THE LINE BETWEEN MILEPOST 504.5 AND  
506.5 UNTIL FEBRUARY 24, 2004.**

**Full Text of Decision**

33903 SERVICE DATE - AUGUST 28, 2003  
DO

**SURFACE TRANSPORTATION BOARD**

**DECISION**

STB Docket No. AB-33 (Sub-No. 158X) ¶

**UNION PACIFIC RAILROAD COMPANY--ABANDONMENT EXEMPTION--  
IN MCPHERSON, ELLSWORTH AND RICE COUNTIES, KS**

Decided: August 27, 2003

On October 24, 2000, Union Pacific Railroad Company (UP) and Central Kansas Railway Limited Liability Company (CKR) jointly filed a petition seeking an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to permit UP to abandon, and CKR to discontinue service over, a 28.02-mile line of railroad: (1) between milepost 523.02, near Geneseo, and milepost 495.80, near Lindsborg (Hoisington Subdivision); and (2) between milepost 531.40 and milepost 530.60, near Lindsborg (McPherson Subdivision), in McPherson, Ellsworth, and Rice Counties, KS. By decision and notice of interim trail use or abandonment (NITU) ¶ served on February 9, 2001, the exemption was granted subject to trail use, public use, environmental conditions, and standard employee protective conditions.

As pertinent here, on February 13, 2001, the City of Marquette, KS (Marquette), filed a request for a NITU. By decision and notice served March 7, 2001, the Board, *inter alia*, modified the February 9 NITU and authorized a 180-day period, until September 3, 2001, for Marquette to negotiate an interim trail use/rail banking agreement with UP for a 2-mile segment of the right-of-way of the Hoisington

Subdivision between milepost 504.5 and milepost 506.5. By decisions served September 4, 2001, and December 31, 2001, the negotiating period was extended to January 2, 2002, and April 2, 2002, respectively.

By letter filed on March 5, 2002, Marquette again sought an extension of the negotiating period. In a decision served on March 29, 2002, the request was denied based on concerns about whether the 2-mile segment at issue was still eligible for a NITU. The decision added, however, that UP and Marquette could submit additional evidence explaining why the segment continued to qualify for a NITU, thus warranting the sought extension.

Marquette responded by letter on April 8, 2002, and filed supplemental evidence on April 17, 2002. On August 12, 2003, Marquette filed a letter indicating that UP has agreed to donate property in furtherance of its trail plans. Marquette requests another extension of 180 days to finalize terms of interim trail use.

Review of the record, as now supplemented, leads to the conclusion that the segment remains eligible for a NITU. Moreover, UP has indicated that it is agreeable to the extension request. Where, as here, the carrier has not consummated abandonment of the segment of the right-of-way at issue and is willing to continue trail use negotiations, the negotiating period may be extended. The parties have shown that the additional time is necessary to complete negotiations. An extension of time will promote the establishment of trails and rail banking consistent with the National Trails System Act, 16 U.S.C. 1247(d). Accordingly, the NITU negotiating period will be extended until February 24, 2004.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Marquette's request to extend the interim trail use negotiating period under the NITU for the portion of the line between milepost 504.5 and 506.5 is granted. The negotiating period is extended until February 24, 2004.

2. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams  
Secretary

**Decision Attachments**

[33903.wpd](#)  
[33903.pdf](#)

11 KB  
23 KB

Size of PDF File: 0.02 MB

Approximate download time at 28.8 kb: 0 Minutes



**Note:**

Some installations of Adobe Acrobat 3 browser plug-ins cannot open large PDF files. If you experience problems viewing our files, we recommend upgrading to an Acrobat Reader 4 or above available free at

ORIGINAL

LAW OFFICE  
THOMAS F. MCFARLAND, P.C.  
208 SOUTH LASALLE STREET - SUITE 1890  
CHICAGO, ILLINOIS 60604-1194  
TELEPHONE (312) 236-0204  
FAX (312) 201-9695  
mcfarland@aol.com

205-195  
THOMAS F. MCFARLAND

April 16, 2002



By UPS overnight

Vernon A. Williams, Secretary  
Surface Transportation Board  
Case Control Unit, Suite 713  
1925 K Street, N.W.  
Washington, DC 20423-0001

Re: STB Docket No. AB-33 (Sub-No. 158X), *Union Pacific Railroad Company --  
Abandonment Exemption -- in McPherson, Ellsworth and Rice Counties, KS*

Dear Mr. Williams:

Enclosed please find an original and 10 copies of Supplement To Explanation Why Line Segment Qualifies For A Notice Of Interim Trail Use, Including Motion For Leave To File Supplement Out-Of-Time, for filing with the Board in the above referenced matter.

Kindly acknowledge receipt by date stamping the enclosed duplicate copy of this letter and return in the self-addressed stamped envelope.

Very truly yours,

*Tom McFarland*

Thomas F. McFarland

TMCF:tl:enc:c:\wp8.0\875\lrrstb1

ENTERED  
Office of the Secretary

APR 17 2002

Part of  
Public Record

BEFORE THE  
SURFACE TRANSPORTATION BOARD

---

UNION PACIFIC RAILROAD )  
COMPANY -- ABANDONMENT ) DOCKET NO. AB-33  
EXEMPTION -- IN MCPHERSON, ) (SUB-NO. 158X)  
ELLSWORTH AND RICE COUNTIES, )  
KS )

---



SUPPLEMENT TO EXPLANATION WHY LINE  
SEGMENT QUALIFIES FOR A NOTICE OF  
INTERIM TRAIL USE, INCLUDING MOTION  
FOR LEAVE TO FILE SUPPLEMENT OUT-OF-TIME

---

CITY OF MARQUETTE, KANSAS  
FREDERICK L. PETERSON, City Clerk  
113 North Washington Street  
P.O. Box 401  
Marquette, KS 67464

Trail Use Applicant

THOMAS F. McFARLAND  
THOMAS F. McFARLAND, P.C.  
208 South LaSalle Street, Suite 1890  
Chicago, IL 60604-1194  
(312) 236-0204

Attorney for Trail Use Applicant

DATE FILED: April 17, 2002

BEFORE THE  
SURFACE TRANSPORTATION BOARD

UNION PACIFIC RAILROAD  
COMPANY -- ABANDONMENT  
EXEMPTION -- IN MCPHERSON,  
ELLSWORTH AND RICE COUNTIES,  
KS

)  
) DOCKET NO. AB-33  
) (SUB-NO. 158X)  
)



**SUPPLEMENT TO EXPLANATION WHY LINE  
SEGMENT QUALIFIES FOR A NOTICE OF  
INTERIM TRAIL USE, INCLUDING MOTION  
FOR LEAVE TO FILE SUPPLEMENT OUT-OF-TIME**

Pursuant to 49 C.F.R. § 1117.1, the CITY OF MARQUETTE, KANSAS (City) hereby files this Supplement to its explanation of why a two-mile line segment in the City of Marquette qualifies for a Notice of Interim Trail Use (NITU). This filing includes a motion for leave to file this Supplement out-of-time.

**BACKGROUND**

The two-mile segment in Marquette is part of a 28.02-mile rail line between Geneseo and Lindsborg, KS (Geneseo-Lindsborg line) for which an exemption for abandonment was issued in a Board decision served February 9, 2001. An NITU for the two-mile segment was issued in that decision.

The negotiation period for that NITU was extended on two occasions. On March 5, 2002, the City filed a request for another extension of the negotiating period.

In a letter filed on March 18, 2002, Union Pacific Railroad Company (UP), the owner of the Geneseo-Lindsborg line, notified the Board that on January 8, 2002 it consummated



abandonment of segments of that line on both ends of the two-mile segment.

In a decision served March 29, 2002, the Board denied the extension of NITU negotiating period sought by the City on the ground that a predicate for interim trail use of a railbanked line is that the line be available for future reactivation of rail service, and that it appeared that UP's consummation of abandonment on both ends of the two-mile segment may have severed that segment from the national rail system preventing future restoration of rail service. However, the Board provided that UP or the City could submit evidence explaining why the segment still qualifies for an NITU. The Board stated that if the parties were to establish that the segment is eligible for a NITU, a subsequent decision would be issued granting the requested extension.

**MOTION FOR LEAVE TO FILE SUPPLEMENT**

The Board provided that evidence explaining why the segment qualifies for an NITU is to be filed within 10 days from the date of service of the March 29, 2002 decision, i.e., by April 8, 2002. The City made a timely filing in response to that provision, but it was made without representation by counsel. Primarily on the advice of the State of Kansas, Department of Transportation (KDOT), which supports railbanking and interim trail use of the two-mile segment, the City retained counsel experienced in trail use and rail abandonment matters. However, counsel was not retained in time to comply with the 10-day filing requirement.

This constitutes a supplemental filing in behalf of the City after consultation with counsel. Good cause exists for granting leave to file this Supplement out-of-time. The City is not well-versed in trail use and rail abandonment matters. Until advised by KDOT, the City was not aware of the benefit of advice of experienced counsel in the circumstances. Upon being retained, counsel prepared and filed this Supplement with all due haste. The delay between this

filing and the due date for filing has not been excessive. Acceptance of this Supplement for filing will not prejudice any interest. There has been no filing which has opposed a determination that the two-mile segment is eligible for an NITU.

#### **SUPPLEMENT**

The two-mile segment continues to be eligible for an NITU because in the event of a future demand for rail service to or from the segment, such rail service can be reactivated in either of two ways.

First, such rail service can be reactivated to connect with UP's active rail line at McPherson, Kansas by utilizing public rights-of-way and a railbanked right-of-way. The public rights-of-way are Kansas Highway 175 from Marquette north to connection with Kansas Highway 4, thence east on Highway 4 to Lindsborg, Kansas. At Lindsborg, Highway 4 intersects the Meadowlark Trail, which extends south to point of connection with UP's active rail line at McPherson, Kansas.<sup>1/</sup> The proposed route for reactivation of rail service is illustrated on the attached Exhibit 1. The State of Kansas has agreed to cooperate with the City and UP to utilize public rights-of-way in conjunction with the named highways in the event of future reactivation of rail service. The right to reactivate rail service over the right-of-way of the Meadowlark Trail is provided by law. No private land would have to be acquired for reactivation of rail service under this scenario.

Secondly, such rail service can be reactivated to connect with UP at McPherson by means of UP utilizing its eminent domain authority to acquire railroad right-of-way between the

---

<sup>1/</sup> The trail sought to be acquired by the City of Lindsborg, KS in the instant proceeding would connect with the Meadowlark Trail.

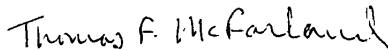
Meadowlark Trail at or near Lindsborg and the two-mile segment at Marquette. The Meadowlark Trail would be used to reactivate rail service between Lindsborg and McPherson. The City would cooperate with UP financially in acquiring right-of-way for reactivation of rail service. UP possesses the requisite condemnation authority by virtue of Kans. Rev. Stats. §§ 66-501, *et seq.*

The Board should find that the foregoing alternate means of reconnecting the two-mile segment to the national rail system at McPherson satisfy the predicate of the National Trails System Act that a railbanked line be subject to reactivation for rail service in the event of future demand. Consistent with the expressed intent of that Act that the Board act to further railbanking and interim trial use wherever possible, the Board should find that the two-mile segment continues to be eligible for an NITU. On further review, therefore, the Board should extend the NITU negotiating period for that segment, as requested.

Respectfully submitted,

CITY OF MARQUETTE, KANSAS  
FREDERICK L. PETERSON, City Clerk  
113 North Washington Street  
P.O. Box 401  
Marquette, KS 67464

Trail Use Applicant



THOMAS F. McFARLAND  
THOMAS F. McFARLAND, P.C.  
208 South LaSalle Street, Suite 1890  
Chicago, IL 60604-1194  
(312) 236-0204

Attorney for Trail Use Applicant

DATE FILED: April 17, 2002

**CERTIFICATE OF SERVICE**

I hereby certify that on April 16, 2002, I served the foregoing document, Supplement to Explanation Why Line Segment Qualifies For A Notice Of Interim Trail Use, Including Motion For Leave To File Supplement Out-Of-Time, on Mack H. Shumate, Jr., Union Pacific Railroad Company, 101 North Wacker Drive, Suite 1920, Chicago, IL 60606, and John Jay Rosacker, Kansas Department of Transportation, Bureau of Transportation Planning, Thacher Building, 217 SE Fourth Street, 2<sup>nd</sup> fl., Topeka, KS 66603-3504, by UPS overnight mail.

Thomas F. McFarland  
Thomas F. McFarland

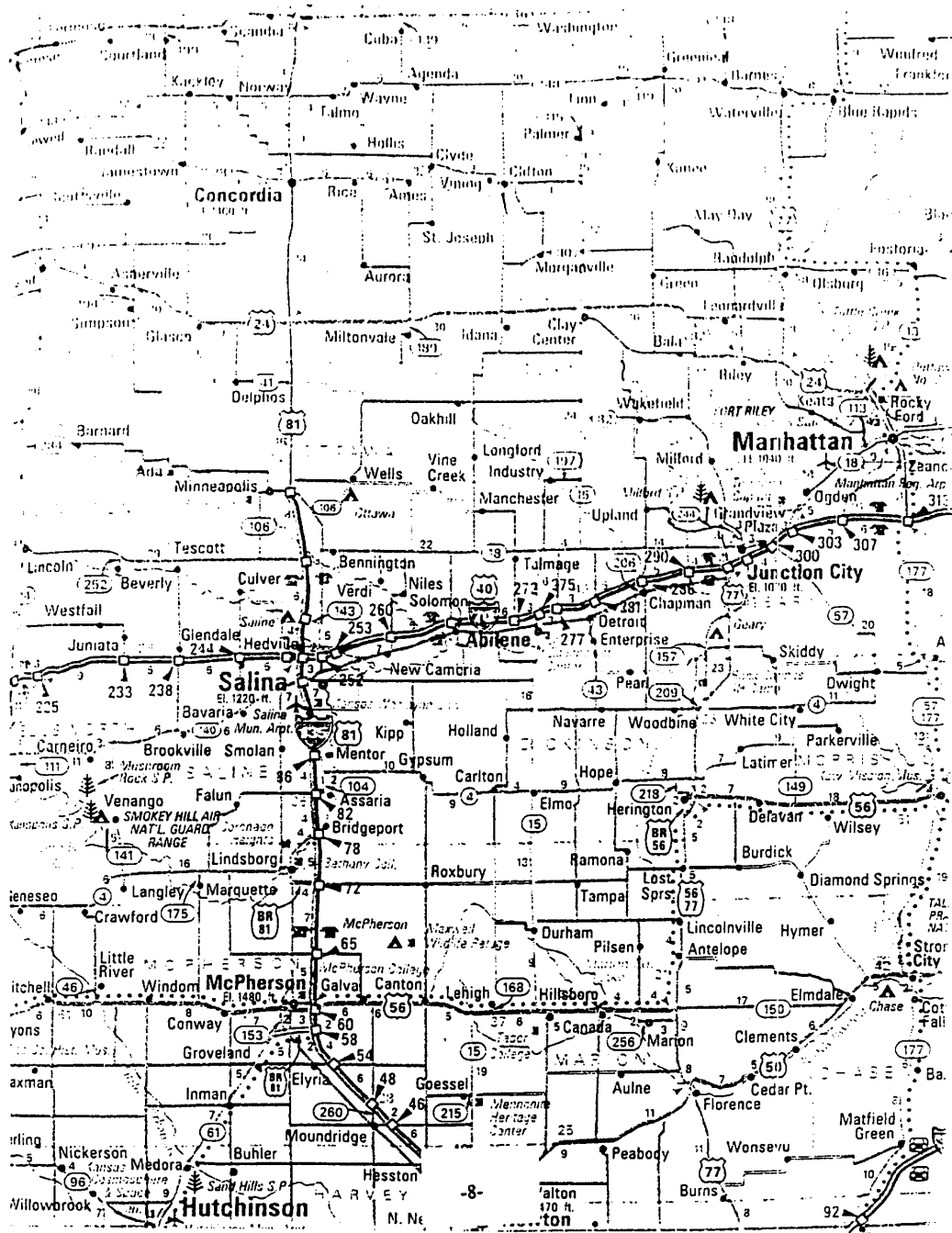


Exhibit F

CHARLES H. MONTANGE

ATTORNEY AT LAW

426 NW 162ND STREET

SEATTLE, WASHINGTON 98177


(206) 546-1936

FAX: (206) 546-3739

24 February 2005

Memorandum to Jim Minick  
Klickitat Trail Conservancy

Re: BNSF title in Goldendale Branch at hwy 14, Lyle

From: Chas. Montange 

Although he has not had time to perform a complete title search, Mr. Nelson at Klickitat Title has provided what he currently understands to be the relevant instrument granting the 100 foot wide rail corridor for the Goldendale Branch in the vicinity of what is now State Highway 14 at Lyle to BNSF's predecessor in interest. That instrument (T. Balfour to Columbia River & Northern Railway Company, filed for record on May 4, 1904), as received by fax from Mr. Nelson, is attached. According to historical research by Barbara Robinson, the Columbia River & Northern Railway was the initial railroad from Lyle to Goldendale.

The instrument states valuable consideration (\$1500), and purports to grant, bargain, sell and convey a "strip of land" among other things in the W2SE4 of section 34, which encompasses the legal subdivision wherein I am told the Goldendale Branch is located at State Highway 14 in Lyle. The deed contains no language limiting use to rail purposes, or otherwise stating that the conveyance is limited to rail use or is a mere right of way over land. It contains no language in the nature of a reverter, and otherwise reads as a deed granting all rights to the land in question forever and in fee simple absolute. Under the Washington Supreme Court's leading decision in Brown v. State, 130 Wn.2d 430, 924 P.2d 908 (1996), the language is clearly sufficient to convey a fee in the land as opposed to an easement. In short, in my opinion, the deed conveys a fee in land.

I underscore that this is not a complete title report or opinion, and in particular is not an opinion on who currently owns title to the land in question. Indeed, I understand that BNSF has conveyed a portion of the relevant segment of the Goldendale Branch to Rutledge Hotel, reserving a roughly 28 foot corridor.

Att.





Exhibit G

18206

## EASEMENT

KNOW ALL MEN BY THESE PRESENTS that SPOKANE, PORTLAND AND SEATTLE RAILWAY COMPANY, a corporation organized and existing under the laws of the State of Washington, herein called the "Railway Company", in consideration of the sum of One Dollars (\$1.00) paid by the State of Washington, herein called the "State", and other valuable considerations hereinafter mentioned, but subject to the understandings and conditions hereinafter set forth, has given and granted and does by these presents give and grant unto the State of Washington the right and easement to construct and maintain a highway, at grade, over and across the railway tracts and right of way of the Railway Company on the premises belonging to the Railway Company described as follows, to wit:

All that part of the Spokane, Portland and Seattle Railway Company's right of way in the southwest quarter of the southeast quarter of Section 34, Township 3 North of Range 12 East of the Willamette Meridian, and in the northwest quarter of the northeast quarter of Section 3, Township 2 North of Range 12 East of the Willamette Meridian, in Blount County, Washington, described as follows:

Beginning at a point in the easterly right of way line of the Spokane, Portland and Seattle Railway Company's Goldendale Branch, which point is 50 feet south of the center line of said Goldendale Branch at Railway Engineer's Station 47 + 18, said point also being 30 feet southwesterly from when measured at right angles to the center line of Washington State Highway Road # 8 at Highway Engineer's Station 18 + 01; thence North 54° 05' West (Washington State Highway bearing North 51° 21' West) parallel with and 30 feet from said center line of said highway to a point which is 30 feet southwesterly from when measured at right angles to said center line of said highway at Highway Engineer's Station 12 + 75; thence northwesterly to a point which is 25 feet southwesterly from when measured at right angles to said center line of said highway at Highway Engineer's Station 19 + 00; thence N. 54° 05' West parallel with and 25 feet from said center line of said highway 54 feet to a point in the westerly right of way line of said Goldendale Branch which point is 50 feet southwesterly from when measured at right angles to the center line of said Goldendale Branch at Railway Engineer's Station 48 + 35; thence northwesterly parallel to and 50 feet from said center line of said Goldendale Branch to a point which is 50 feet southwesterly from when measured by right angles to said center line at Railway Engineer's Station 49 + 02; said point also being 25 feet northeasterly from when measured at right angles to the center line of said highway at Highway Engineer's Station 20 + 02; thence South 54° 05' East parallel with said center line of said highway 52 feet; thence southeasterly to a point which is 30 feet northeasterly from when measured at right angles to said center line of said highway at Highway Engineer's Station 19 + 25; thence South 54° 05' East parallel with said center line of said highway to a point which is 28 feet northeasterly from when measured at right angles to the center line of said Goldendale Branch at Railway Engineer's Station 48 + 39; thence northeasterly to a point in the easterly right of way line of said Goldendale Branch which point is 50 feet southeasterly from when measured at right angles to the center line of said Goldendale Branch at Railway Engineer's Station 49 + 96; thence southeasterly along said easterly right of way line to the point of beginning.

TO HAVE AND TO HOLD the above described right and easement unto the State of Washington subject, however, to the following terms and conditions;

1. The easement hereby granted shall be perpetual but it shall revert to the Railway Company when the premises hereinabove described shall cease to be used by the State for highway purposes.

2. The State shall assume the entire cost of construction and maintenance of the crossing including the planking between the rails and one foot on the outside thereof.

IN WITNESS WHEREOF The Spokane, Portland and Seattle Railway Company has caused this instrument to be executed by its officers duly authorized and its corporate seal to be affixed this 3rd day of October 1933.

(Seal)  
Corporate

SPOKANE, PORTLAND AND SEATTLE

RAILWAY COMPANY,

By Charles Donnelly

President

Attest:

A. M. Gottschald Assistant Secretary.

Approved as to description  
A. J. Witchel  
Assistant Superintendent

Approved as to form  
Carey, Hart, Spencer and McCulloch  
By C. Hart

STATE OF MINNESOTA,        }  
County of Ramsey,        } ss

On this 3rd day of October, 1933, before me appeared CHARLES DONNELLY and A.M. GOTTSCHALD both to me personally known, who being duly sworn, did say that he, the said CHARLES DONNELLY, is the President, and he, the said A.M. GOTTSCHALD, is the Assistant Secretary of Spokane, Portland and Seattle Railway Company, the within named corporation, and that the seal affixed to said instrument is the corporate seal of said corporation, and that the said instrument was signed and sealed in behalf of said corporation by authority of its Board of Trustees, and said Charles Donnelly and A. M. Gottschald acknowledged said instrument to be the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, this, the day and year first in this, my certificate, written.

(Seal)

J. M. McIlrath, Notary Public,

in and for said County and State.

J. M. McIlrath, Notary Public, Ramsey Co., Minn.

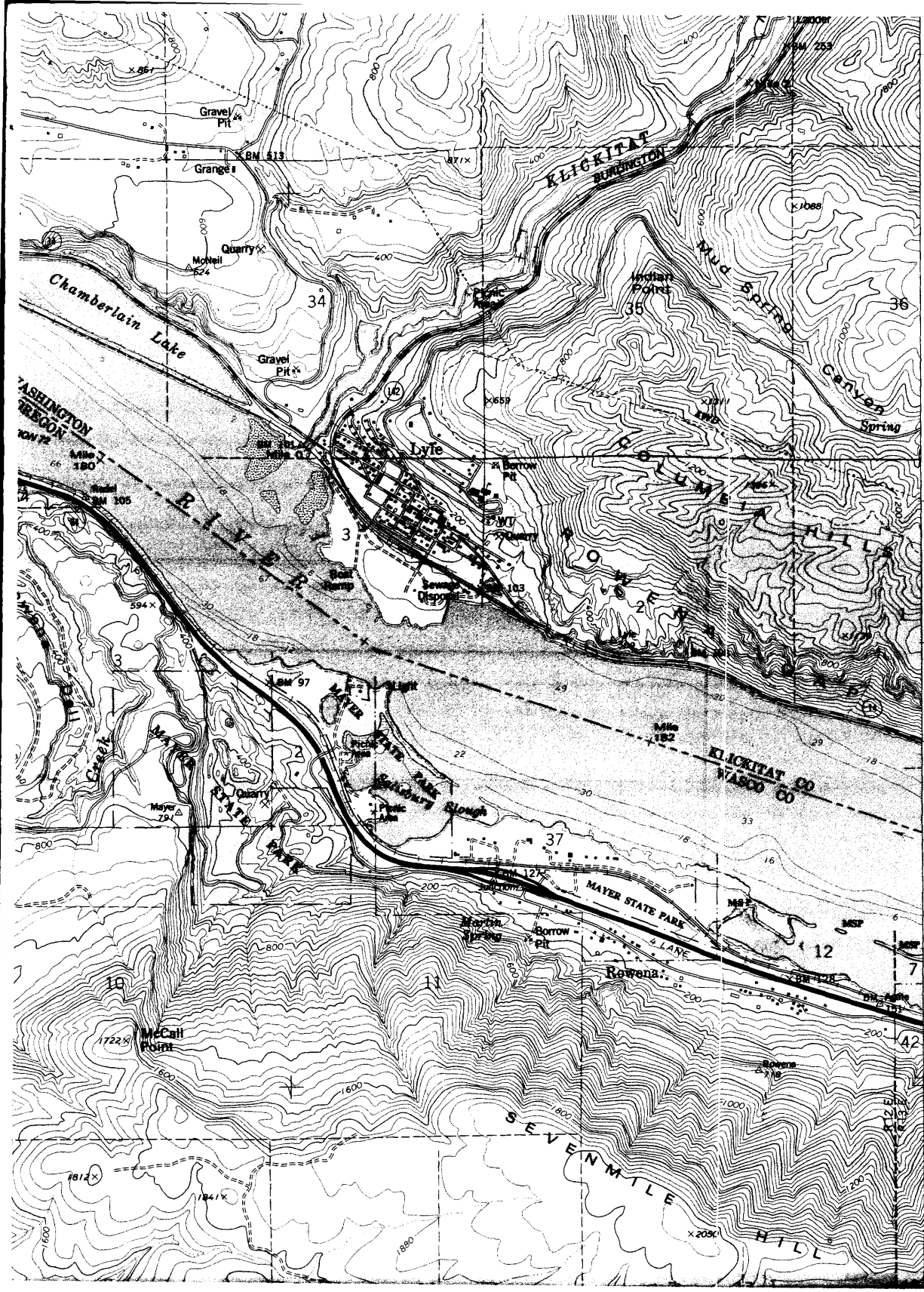
My Commission Expires March 29, 1939.

Filed for record Oct. 24, 1933 at 3:00 P.M. and recorded at the request of State of Washington.

*E. M. Baker*

County Auditor.

Exhibit I



42°30'

42

40'

SECTION 34 35 36 37 10 11 12

WASHINGTON OREGON

CLICKITAT RIVER

CHAMBERLAIN LAKE

LYTLE

MAYER STATE PARK

SEVEN MILE HILL

CLICKITAT CO WASCO CO

MURDOCK 3.9 MI

WISHAM 15 MI

THE DALLES NORTH 17.8 MI

ARLINGTON 61 MI